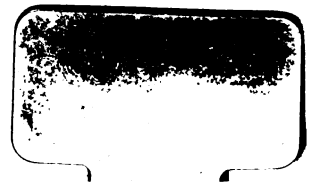

A

TEXT BOOK OF MILITARY LAW

AS APPLICABLE TO

PERSONS SUBJECT TO THE ARMY DISCIPLINE ACT;

TO WHICH IS ADDED

MILITARY LAW

AS APPLICABLE TO

PERSONS SUBJECT TO THE INDIAN ARTICLES OF WAR.

BY

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"Indocti discant, et ament meminisse peritis"

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PREFACE TO THE FOURTH EDITION.

THE very favourable reception which has been given to the former editions of this book emboldens me to hope that a fourth edition may not prove unsuccessful.

The whole book has been most carefully rewritten and corrected to suit the provisions of the new "Army Discipline Act," and a full index prepared. A chapter has been also added on Indian Military Law, which will be found useful by all officers in India, and especially by officers of the Indian Staff Corps and Indian Local Army.

I shall be thankful to any one who will point out to me any errors or omissions he may notice.

KABUL, *1st July*, 1880.

CHAPTER I.

THE subject of law is a very wide one. We, however, have only to consider that branch of the subject which concerns the duties we may be called upon to perform as military officers.

Common law.

From the earliest times it has been found necessary to establish laws and regulations for the common welfare and for the protection of individuals. From the usages and customs thus engendered, arose a well-known and universal usage which is called "common law." This is an unwritten code, the maxims of which, coming down to us from ancient times, are usually quoted in Latin.

Statute law.

The progress of civilization has caused numberless questions to arise, to assist in deciding which laws have, from time to time, been passed by the ruling authorities of the country. These constitute the written code, or "statute law."

To illustrate this: By common law all property belonging to a woman becomes absolutely her husband's on her marriage. By statute, however, enactments have been made to enable such property to be settled on the wife—*i. e.*, to be made over to trustees, who, in their turn, are bound, by the law of trusts, to pay the income arising from such property in the manner directed by the deed of settlement.

For a law to become binding, it must be passed by both Houses of Parliament, and be approved by the Sovereign.

The civil law of the realm is supreme, and is equally binding on all persons whether civil or military.

For the due maintenance of military discipline, it has been found necessary to confer power on the military authorities, to enable them to deal with offences which it would be dangerous to leave to the civil authorities. Many acts, which are most serious crimes if committed by a soldier, are no crimes at all, or, at most, very trifling ones if committed by a civilian. Disobedience of orders, desertion, sleeping on post as sentry, drunkenness under arms, insubordination, &c., are purely military crimes, and a special code is necessary to enable us to deal with them. The action of civil law is too slow for military purposes. The necessity, even now, of special codes for the army is shown by the Homicide Act passed in 1862 for the speedy trial of soldiers committed for military murder. Hence arose military law; and, as you may often hear of martial law, it will be well to understand the meaning of these terms, and the difference between them.

Military law defined. Military law is law administered under a special code, framed for the purpose of giving military authorities power to deal with offences, which are either not provided for by the civil law, or which it would be dangerous to leave to the civil power.

Observe that military law is regular in its administration, and is administered under a regular code by persons authorized to do so.

Martial law is irregular in its administration—has *no* code. It is only used in emergencies, and is then exercised by persons who have assumed the power.

Civilians tried by military courts would, probably, not be awarded military punishments, and might be tried for offences purely civil; and though it is a power which, by the custom of

war, is entrusted to the officer commanding an army on active service, yet such officer exercises it under responsibility to the laws of his country, and may be subsequently called to account for his actions. I should define it as follows:—

Martial law is sway exercised by a military commander over all persons, whether civil or military, within the precincts of his command, in places where there is either no civil judicature, or where such judicature has ceased to exist. **Martial law defined.**

There are three cases in which martial law would be in force, *viz.*:—

1*st case.*—In the case of a conquered country.

The old laws having ceased to exist, the only law is that established by the military commander.

It must be remembered, however, that in dealing with his own soldiers, his power is limited by military law.

The 2*nd case* is that of a country or district formally put under martial law by an Act of Parliament.

In this case the same power which made the civil law, suspends it and replaces it, temporarily, by the military code.

The 3*rd case* is when, under circumstances of imminent danger, the executive proclaims martial law.

We had an example of this in Jamaica in 1866.

In this case the military authority and the civil authority clash.

It was formerly thought that the executive had this power; but the Lord Chief Justice, in Governor Eyre's case, denied this, and pointed

out that martial law had never been proclaimed in England since the Petition of Right.

It *had* been so proclaimed in Ireland, but always backed up by an Act of Parliament.

Such a proclamation of martial law, being in itself illegal, cannot legalize acts done under it, though the forms of military law may be strictly adhered to; but it will materially diminish an officer's responsibility if the forms of military law *be* adhered to.

It must be remembered, however, that the executive has the same right as any private individual of taking the law into its own hands in case of necessity; *e.g.*, a man killing another in defence of his own life.

In the Jamaica insurrection, the fact that Gordon (a man executed) was arrested outside the proclaimed district, greatly increased the responsibility.

Martial law should never be retrospective; only acts committed after its proclamation should be tried under its powers.

Punishments awarded by courts martial for crimes which would be tried by the civil power, were any civil judicature in force, are to be such as are known to the laws of England.

MILITARY LAW.

Military code.

This is a distinct code regular in its operations. The code consists of two parts—

(*a*). Written.
(*b*). Unwritten.

(*a*). The written part consists of—

1. The Army Discipline Act (annual).
2. The Articles of War.
3. The Regulations of Majesty for the time being.

(*b*). The unwritten part is founded upon the established custom of the army.

Both have been, to a certain extent, ascertained by decisions given by competent authority.

In old days, every commander made his own "ordinances" for the government of his forces. The prerogative to command and regulate the whole military force of the realm rested with the Crown.

These powers were frequently abused, and used as means of extortion and oppression. The courts of chivalry were perpetually clashing with those of common law; and, finally, in the reign of Charles I., these grievances brought about the famous Petition of Right, which, practically, took away the commander's power of enforcing discipline. Deserters had to be treated as civil criminals, &c. The necessity for a special code became manifest in 1689, in the reign of William III., when some troops, ordered to Holland, mutinied, and marched north, having seized four guns and the treasure chest. They were subdued, but there was no means of dealing with the mutineers as such. The Parliament, therefore, passed a bill that "standing armies and courts martial were unknown in England; but, in consideration of the perils of the time, no man mustered or in pay of the Crown should desert or mutiny on pain of death." This was the first Mutiny Act, dated 3rd April 1689, and was only to hold good for six months. Since then a Mutiny Act has been passed annually, the whole establishment of the army being thereby submitted every year to the control of Parliament. In 1879, the Army Discipline and Regulation Act was passed, superseding the existing Mutiny Act and Articles of War from the time it came into force. This

is the Act by which we are now guided. Its powers are to be annually renewed by an Act of Parliament.

Articles of war. In 1712, in Queen Anne's reign, the Articles of War made by the Sovereign were first formally recognized, but they were made to apply only beyond seas.

In 1716 (George I.), the Sovereign was empowered, by the Mutiny Act, to make Articles of War for the government of the troops at Home as well as abroad. The Army Discipline Act empowers Her Majesty to make Articles of War, which "shall be taken judicial notice of by all judges and all courts whatsoever." Articles of War thus made have the same authority over officers and soldiers as the Army Discipline Bill itself.

A. D. A. 68.

A. D. A. 69. The same Act gives Her Majesty power to make rules of procedure, provided that they are not inconsistent with the provisions of the Act.

The Army Discipline Act, being a regular Act of Parliament, binds civilians as well as soldiers on such points as are therein especially declared to be applicable to the former.

The Articles of War are binding on soldiers only.

Therefore, all questions concerning civilians must be provided for in the Army Discipline Act; *e. g.*, billets, recruiting, apprehension of a deserter, compulsory attendance of a civilian witness, recruit deserting before becoming liable to military law, &c.

NOTE.—The Army Discipline Act is an Act of Parliament passed by both Houses of Parliament, and approved by the Queen *annually*.

The Articles of War are ordinances framed by the Sovereign under the authority of the Army Discipline Act for the government of the army. They are *permanent* till altered by the Sovereign—*i. e.*, they are not framed afresh annually, but remain in force till any alteration in them be made and published by the order of the Sovereign.

CHAPTER II.

Persons subject to military law.

HAVING in my last chapter explained the authority under which military law is administered, I propose now to consider who are subject to it.

Officers. A.D.A. 198.

The following are subject as officers, *viz.* :—

1. Officers of the regular forces on full pay, staff officers, and officers employed on military service under the orders of regular officers.

2. Officers of the permanent staffs of the auxiliary forces, and militia officers.

3. Persons serving under command of a regular officer in the position of officers of any troops raised beyond the limits of the United Kingdom and India.

4. Officers of yeomanry and volunteers, when in command of men subject to military law; or when their corps is on actual military service; or if they be doing duty with troops subject to military law; or if, with their own consent, they be ordered on duty by the military authorities.

5. Persons who, under orders of a Secretary of State, or of the Governor-General of India, accompany, in an official capacity, troops on active service beyond the seas.

6. Persons who accompany a force on active service with a pass entitling them "to be treated as officers."

Soldiers. A.D.A. 169.

The following are subject as soldiers, *viz.* :—

Regulars.

1. Soldiers of the regular forces.

Permanent staff, auxiliary forces.

2. Non-commissioned officers and men of the permanent staff of the auxiliary forces.

Colonial forces, &c. 3. Non-commissioned officers and men of a force raised beyond the limits of the United Kingdom and India, and under command of an officer of the regular forces.

Pensioners. 4. Pensioners employed in military service under officer of regular forces.

Army and militia reserve. 5. Non-commissioned officers and men of army and militia reserve when—

(a). Out for training.

(b). On duty having volunteered their services.

(c). Called out for duty in aid of civil power.

(d). Called out on permanent service.

Militia. 6. Non-commissioned officers and men of militia during training, either alone or with regulars, or if attached to or acting with regulars, or if their corps is embodied.

Yeomanry. 7. Non-commissioned officers and men of yeomanry, when being trained alone or with regulars or militia, when subject to military law, or attached to regulars, or on actual military service, or serving in aid of civil power.

Volunteers. 8. Non-commissioned officers and men of volunteers, when being trained with regulars or with militia, when subject to military law, or attached to or acting with regulars, or when on actual military service.

Except when on actual service, each *volunteer's consent must be obtained before he enters on a service which will subject him to military law.*

Followers, &c. 9. Persons in the service of Her Majesty's troops when on active service beyond seas.

10. Persons, followers of or who accompany Her Majesty's troops, on active service beyond seas.

Persons who come under paragraph 5 as officers, or under paragraph 10 as soldiers, if with a force part of which is under Indian military law, and if they be natives of India, are only liable to Indian military law. **Exceptions.**

Officers, soldiers, &c., in Indian forces, being natives of India, are only liable to Indian military law. A.D.A. 172.

A person who, after attestation, has received pay for three months, is deemed to have been *duly* attested and enlisted, and cannot claim his discharge on account of any illegality in his enlistment. Up to three months he may claim his discharge on account of error or illegality therein, but this would not affect his position or liability as a soldier till he were so discharged. *It is sufficient that he be in pay as a soldier.* A. D. A. 97.

Observe that the permanent staff of the auxiliary forces and pensioners are subject the same as regulars. A. D. A. 173 (2).

Marines can only be tried by general court martial convened by an officer holding a warrant from the admiralty, except when serving beyond seas with other regular forces, and there be no such officer present. In such a case this must be stated in the order convening the court. A district court martial to try a marine may be convened by any officer who holds a warrant to convene district courts martial. **Marines.** A.D.A. 171.

A person who commits an offence against military law whilst subject to it may be taken into militry custody and tried by a military court any time within three months after he may have ceased to be liable to it, subject to the rule that he cannot be tried for any offence committed more than three years before the date of his trial. **Persons who have left the service.** A.D.A. 151.

Mutiny, desertion, and fraudulent enlistment, can be tried at any length of time after commission A.D.A. 151. A. D. A. 154.

of the offence, whether the offender has ceased to be subject to military law or not, subject to certain exceptions, for which see "desertion."

Second trial.
A. D. A. 150.
A. D. A. 154 (6).

A person who has been acquitted or convicted of an offence by a court martial, or by a competent civil court, is not liable to be tried again by court martial for that ofience.

He may be tried by a civil court for an offence for which he had been previously tried by a military court; but if the military court had awarded punishment, the civil court is directed to "have regard" to this in awarding its punishment.

A. D. A. 151. A person sentenced to penal servitude or imprisonment remains subject to military law during the term of his sentence, although he may have been discharged the service.

A. D. A. 152. A person subject to military law, who commits an offence anywhere, may be tried for it at any place where he may subsequently be, which is within the jurisdiction of an officer authorized to convene general courts martial.

A. D. A. 153. No greater punishment can, however, be awarded than could have been given had he been tried where the offence was committed.

A. D. A. 95. A soldier is liable to trial by court martial when attested.

DURATION OF THE ACT.

The Army Discipline and Regulation Act is brought into force by an annual Act of Parliament, and remains in force for such time as such Act shall specify. The first one so passed in 1879 was to hold good—

In the United Kingdom, till 30th April 1880.

In Europe, Malta, West Indies and America, till the 31st July 1880.

Elsewhere, till the end of 1880.

It will probably, in future Acts, be renewed annually for twelve months from these dates. It comes into force from the date it may be promulgated in orders at any place out of the United Kingdom.

A court martial convened, before it comes into force, under a former Act, may proceed after it comes into force as if the former Act had not expired, but a greater punishment cannot be given than is authorized by the new Act.

AUTHORITY UNDER WHICH COURTS MARTIAL ARE HELD.

Warrants, &c.

The Army Discipline Act authorizes Her Majesty to, by warrant under Her Sign Manual, convene, or empower any qualified officer to convene only, or to convene *and* confirm general courts martial, and to delegate such powers to any officer under his command not under the rank of field officer. A. D. A. 119. A. D. A. 48.

Out of the United Kingdom, in special cases, such powers may be given to a captain. These powers are limited by such restrictions as the authority which grants them may think fit to invest in him, and may be revoked at any time by that authority.

They may be given either to an individual named officer, or, as is more usual, to the officer (not under the necessary rank) holding a certain position.

NOTE.—*Qualified officer here means the commander-in-chief, or any field officer commanding regulars, or the lord lieutenant of Ireland, the governor-general of India, or governor of a colony, in command of any body of regulars.*

A. D. A. 120. A. D. A. 48.

Any officer or person who holds Her Majesty's warrant to convene general courts martial may convene and confirm district courts martial, and may delegate his powers so to do to any officer

under his command, not under the rank of captain, subject to such restrictions as he may think fit to impose.

It must be observed that it is only officers who hold warrants from *Her Majesty* who can thus delegate their power. Those who hold Warrants from the Commander in Chief in India &c. cannot do so.

Courts convened without warrant.

The following courts martial may be convened by officers, whether they hold warrants or not, *viz.*,

Field general courts martial.

A. D. A. 49. Regimental courts martial.

A. D. A. 47. These courts are convened under the authority of the sections of the Army Discipline Act quoted in the margin by the officers therein authorized so to do.

GENERAL RULES.

A. D. A. 47, 48. 1. The president must be *named* by the convening officer.

A. D. A. 50. 2. The officers sitting on a court martial may belong to the same or different corps, or may be unattached to any corps, and may try persons attached to any corps.

A. D. A. 48. 3. No officer can sit on a general court martial unless he has held a commission for three years before the assembly of the court.

4. The following officers cannot sit on a court martial:—

The prosecutor.

A witness for the prosecution.

And *except on a field general court martial*—

The prisoner's commanding officer.

The convening officer.

The investigating officer.

[*Query.*—What constitutes the investigating officer? *Answer.*—The officer who had the power of disposing of the case.]

5. On trial of a field officer no member may be under the rank of captain.

The president is appointed by name; the names of other members need not be given. It is usual to order each brigade or corps to furnish so many field officers, captains, or subalterns, as the case may be.

At home, the president and judge-advocate are always appointed by warrant for a general court martial. In India it is the custom simply to detail them in orders.

Authority under which a G. C. M. assembled.

To trace the authority under which a general court martial would be assembled at Umballa—

1. The Army Discipline Act gives the Queen power to issue warrants for assembling courts martial, and to enable officers holding such warrants to delegate their powers to others, and to appoint judge-advocates and provosts martial.

2. Under this power the Queen issues a warrant under the Sign Manual to the commander-in-chief of the Bengal Presidency (who is also commander-in-chief in India, and gets a warrant in that capacity), giving him power to convene general courts martial, and to delegate that power to any field officer.

3. Under this warrant commander-in-chief issues a warrant to the officer commanding the Sirhind Division, authorizing him to convene general courts martial.

4. Under this authority the officer commanding Sirhind Division convenes the court in orders, naming the president, prosecutor, and judge-advocate.

NOTE.—*Although officers commanding divisions in India hold warrants authorizing them to convene general courts martial, yet, under instructions from superior authority, they refer all cases requiring a general court martial to the commander-in-chief of the presidency, and the charge (if the court be ordered) is signed by the adjutant-general. The holding these warrants gives to officers commanding divisions the power to sanction trial by district or garrison court martial of offences properly only triable by general court martial.*

CHAPTER III.

A. D. A. 179. A MILITARY court martial cannot be held on board any of Her Majesty's ships in commission.

Should a soldier on board such a ship commit a minor offence, he can be punished by the captain of the ship, provided that the military commanding officer concurs in the punishment; but should a case occur which renders a court martial necessary, the man should be kept a prisoner till he can either be landed or transferred to a transport *not* in commission, and there tried.

A. D. A. 47. On board a ship not in commission the military officer in command may convene and confirm a regimental court martial, no matter what his rank.

A subaltern, therefore, can convene such a court martial on board such a ship, *but nowhere else*; *e. g.*, he cannot convene one on the line of march.

A. D. A. 49. The only other court a subaltern can convene, under any circumstances, is a field general court martial.

Q. R. VI., 56. When a commanding officer is to be tried, officers who have held similar commands are to be selected, if possible, as members of the court.

Q. R. VI., 55. When an officer is tried the members should, if possible, be of senior rank to the prisoner.

On the trial of a subaltern, not more than two subalterns to be on the court; on that of a field officer, *no* subaltern is to be on the court.

Q. R. App. A., 10. The presence of an officiating or deputy judge-advocate, legally appointed to act as such, is necessary during the whole of the proceedings of

a general court martial: at home the deputy judge-advocate attends: abroad, a deputy judge-advocate is usually appointed by the convening officer.

There are several descriptions of courts martial, varying according to the rank of the person tried and the gravity of the crime. They are—

1. General court martial.
2. Field general court martial.
3. District or garrison court martial.
4. Regimental court martial.

A commissioned officer can only be tried by a general or field general court martial, and no lower courts can award death or penal servitude. A. D. A. 48.

A general court martial must consist of nine officers at least, unless the convening officer considers that number not available without detriment to the public service, in which case it may consist of five officers as a minimum. A. D. A. 48.

The fact that the larger number was not available must be stated in the order convening the court.

These are the *minimum* numbers. You may have as many *more* on the court as you like. It is usual to put on one or two extra members, so that should anything happen to a member, they can go on without him. There is generally an odd number.

One of the members is styled the president. He is appointed by the convening officer. He is necessarily the senior combatant officer. He is usually either a general officer or a colonel, and *must* be a field officer, except when one cannot be had, when a captain may be appointed, the fact of a field officer not being available being stated in the order convening the court. Q. R. VI., 54.

POWERS OF SENTENCE.

Punishments, officers.

A general court martial can sentence an officer to—

A. D. A. 44.

(*a*). Death.
(*b*). Penal servitude not less than five years.
(*c*). Imprisoment, with or without hard labour, not exceeding two years.
(*d*). Cashiering.
(*e*). Dismissal.
(*f*). Forfeiture of seniority of rank, either in the army or his corps, or both.
(*g*). Reprimand, or severe reprimand.

In place of (*f*), an officer of the Indian staff corps may be sentenced to—

A. D. A. 172. Forfeiture of all or any part of his army or staff service, or of both.

A. D. A. 41. Also, if tried by court martial for a civil offence, an officer is liable—

For treason or murder—
to death or less punishment,
For manslaughter, treason, felony, or rape,
to penal servitude or less punishment.

For any offence not specified in Army Discipline Act, which is punishable by the law of England, no matter where the offence was committed—

to such punishment as might be awarded for an act to the prejudice of good order and military discipline; or—
to such punishment as the law of England awards for the offence.

NOTE.—*When a punishment "or less punishment" is mentioned, "less" means lower down in the list of punishments given above (a) to (g).*

Officers sentenced to penal servitude or imprisonment.

An officer must be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment.

He may be sentenced to both forfeiture of seniority of rank and to reprimand or severe reprimand.

A general court martial may sentence a soldier to— **Punishments, soldiers.**

(*a*). Death or corporal punishment.
(*b*). Penal servitude not less than five years.
(*c*). Imprisonment, with or without hard labour, not exceeding two years.
(*d*). Discharge with ignominy.
(*e*). Dismissal, if a volunteer.
(*f*). Reduction, if a non-commissioned officer, to a lower grade, or to the rank of a private soldier.
(*g*). Forfeitures, fines, stoppages.

Civil offences as above for officers.

NOTE.—1. *A soldier may be sentenced to discharge with ignominy in addition to corporal punishment, or penal servitude, or imprisonment.*

NOTE.—2. *Corporal punishment can never exceed twenty-five lashes, can only be given for offences punishable with death, and cannot be given to warrant or non-commissioned officers, even though they may be reduced, for any offence committed whilst they were non-commissioned officers.*

NOTE.—3. *A non-commissioned officer must be reduced to the ranks before being awarded penal servitude or imprisonment.* A.D.A. 175.

NOTE.—4. *The term "non-commissioned officer" includes an acting non-commissioned officer; also a warrant officer who does not hold an honorary commission; also an army schoolmaster.* A.D.A. 181.

NOTE.—5. *An army schoolmaster cannot be reduced to the ranks, but may be dismissed by—* **Army school masters.** A.D.A. 175.

The commander-in-chief.
The commander-in-chief in India.
The commander-in-chief of a presidency in India.

A warrant officer, holding an honorary commission, is a commissioned officer. Other warrant officers cannot be punished by their commanding officer, nor tried by regimental court martial, nor sentenced to corporal punishment, nor to any punishment not mentioned in section **Warrant officers.** A.D.A. 181. A.D.A. 174.

174, except when tried by a general or field general court martial.

A district or superior court martial can sentence him to—

Dismissal.

Suspension from rank, pay, and allowances for a stated period.

Reduction in present grade of warrant officer to a lower place.

Reduction to any place ordered in a lower grade.

If originally enlisted as a soldier—

Remanded to a corps in the same branch of the service as that to which he formerly belonged, there to occupy the position he held before becoming a warrant officer.

Remanded to a corps as above, there to serve as a private soldier.

A. D. A. 172 (5). The governor of an Indian presidency may reduce a warrant officer who does not hold an honorary commission, and who is serving in or belonging to his presidency, to a lower grade, or may remand him to regimental duty in the rank held by him immediately before becoming a warrant officer.

Hospital apprentices. A. D. A. 172(6). The provisions of the Act, which relate to warrant officers not holding honorary commissions, apply also to hospital apprentices in India, although not appointed by warrant.

NOTE.—*A warrant officer reduced to the ranks cannot be compelled to serve in the ranks as a soldier.*

Persons not in the service. A.D.A. 176. A person not in the service, but subject to military law, may be tried by any court martial, except a regimental court martial, convened by an officer who has power to convene such a court, and under whose command the offender may be.

FIELD GENERAL COURTS MARTIAL.

Field general courts martial.

These courts can be held in any place *beyond seas*, where it is impracticable to assemble a general court martial.

They are convened, without warrant, by the officer commanding the detachment, under the authority of the Army Discipline Act, no matter what his rank. A. D. A. 49.

They consist of any three or more commissioned officers, and the officer convening it *may* sit as president himself. This is the *only* case in which the convening officer can so sit. If practicable, however, he must appoint another officer as president, who should, when possible, be not below the rank of captain.

They can award any sentence which a general court martial could give for the offence they are trying.

They cannot try any offences, except those against the person or the property of an inhabitant of the country.

Such court can only try any person under the command of the assembling officer.

The sentence cannot be carried out until it shall have been confirmed by an officer authorized to confirm general courts martial in the force of which the detachment forms a part, and to which the person so tried, convicted, and adjudged belongs. (Indian detachment general courts martial differ in this point.) A. D. A. 54.

This court is specially designed for the investigation of an alleged offence on the spot, in such cases as the march of detachments to and from depôts, hospitals, &c., on the line of communications of an army, and when soldiers might commit an outrage on an inhabitant, and it would be inconvenient to convey the witnesses to head-quarters.

FIELD GENERAL COURT MARTIAL ON APPLICATION OF PROVOST MARSHAL.

A. D. A. 72. On active service a provost marshal, or one of his assistants, may make a complaint against any person subject to military law, and this court can be convened by any officer in immediate command of a detachment; the composition of the court is as before in courts under section 49, but there are the following differences:—

Any offence may be tried by it—not only offences against person or property of inhabitants.

The court is not to be convened unless the officer considers it not practicable to try the offence by ordinary court martial.

The sentence may be confirmed by the general or field officer commanding the force, and, if not capital, by any general or field officer in the force.

Rules. Procedure 1 (*e*) and 17. If the court pass sentence of death, the whole court must concur.

The proceedings are recorded on a short form given in the procedure rules. If the circumstances are such as to prevent this being done, there need be no writing except a note by the provost marshal, stating, at least, the name of the offender, the offence, the sentence, and the name of the confirming officer. This does not apply to courts under section 49.

DISTRICT OR GARRISON COURTS MARTIAL.

A. D. A. 48. A district or garrison court martial must consist of seven officers, at least, in the United Kingdom, India, Malta, and Gibraltar; elsewhere, if the convening officer consider that number not available, of five officers, and, if five be not available, then of three officers.

If the smaller number be ordered, it must be stated in the order convening the court that more were not available.

President, a field officer, unless one be not available, when a captain may be president; and if a captain be not available, then a subaltern may be president.

The court must be convened by an officer holding a warrant empowering him to do so, and must be confirmed, similarly, subject to any restrictions which his warrant, or the instructions given regarding the use of it, may impose. A.D.A. 120.

The president of a district court martial on a warrant officer can in no case be under the rank of captain.

The regulations regarding warrant officers not holding honorary commissions apply also to hospital apprentices in India. A.D.A. 172.

POWERS OF SENTENCE OF DISTRICT OR GARRISON COURT MARTIAL.

A district or garrison court martial can give any person subject to military law and triable by court martial (*except officers* whom it cannot try) all the punishments which a general court martial can give, except death and penal servitude. A. D. A. 48.

A warrant officer can be given only the punishments mentioned in section 174, and enumerated before under "powers of sentence, general court martial."

REGIMENTAL COURTS MARTIAL.

These courts are for trying smaller offences, which do not need such severe punishments as a district or garrison court martial has power to give.

They can be convened by any* officer holding A. D. A. 47.

* *As a rule, he should direct the Commanding Officer to convene the Regimental Court, not convene it himself, unless the Commanding Officer cannot convene an adequate Court for want of Officers.* Horse Gds. G. O. 41. 1 April 1880.

a court martial warrant, or by any commanding officer not under rank of captain, or, on board a ship not in commission, by a commanding officer of any rank.

They must consist of five officers, unless that number be not available, when they may consist of three officers.

The president must be not under the rank of captain, except—

(*a*). On the line of march.
(*b*). On board a ship not in commission.
(*c*). When a captain is not available.

They can try any person subject to military law and triable by court martial, except—

Officers.

A.D.A. 174. Warrant officers.

A.D.A. 176. Persons who do not belong to Her Majesty's forces.

A.D.A. 46. Soldiers who appeal from commanding officer's award, and request a District Court Martial.

They can try any offence, including civil offences, when triable by court martial.

A.D.A. 50. A.D.A. 47. The officers sitting on the court need not belong to the same or to any corps, and can try persons attached to any corps, provided that the person to be tried be under the command of the convening officer.

POWERS OF SENTENCE.

A regimental court martial cannot award—

(*a*). Death.
(*b*). Penal servitude.
(*c*). Discharge with ignominy.
(*d*). Imprisonment in excess of forty-two days. Otherwise its powers are the same (with regard to the persons triable by it) as those of other courts martial.

POWERS OF A COMMANDING OFFICER.

A commanding officer, should he consider that a case is not sufficiently serious to require trial by court martial, can award to a soldier— A.D.A.46.

Imprisonment, with or without hard labour, not exceeding seven days.

Fine for drunkenness, to private soldier, not exceeding ten shillings, either in addition to, or without imprisonment with or without, hard labour.

Authorized deductions of pay. See A. D. A. 34.

For absence without leave only—

Imprisonment, with or without hard labour, not exceeding twenty-one days; but such imprisonment, if exceeding seven days, must not exceed the number of days of absence.

Imprisonment up to seven days is awarded *in hours*; if exceeding seven days it is to be expressed in the award *in days*. Horse Gds. G. O. 25.

If the absence was over seven days, the accused may demand that the evidence be taken on oath.

A soldier can appeal from the decision of his commanding officer *only* in the case of any award which touches his pay: imprisonment does so touch it. Such an appeal would necessitate the offence being tried by district court martial only, if the soldier demand to appeal to that court. If pay be deducted for absence *under* five days, the soldier has a right to appeal; for absence *over* five days, the pay for period of absence *must* be deducted, and therefore the soldier cannot appeal. **Power of appeal.**

A commanding officer can also award such minor punishments as are authorized by the Queen's Regulations, but cannot give a minor punishment for an offence for which imprisonment exceeding seven days is awarded. **Minor punishments.**

These minor punishments are as follows:—

Q.R. VI., 12. In the royal engineers, forfeiture or reduction of the rates of working pay.

Confinement to barracks for any period not exceeding twenty-eight days, which carries with it punishment drill for fourteen days.

Or the same, without drill, for concealing disease, with or without an entry in the defaulter book, at the commanding officer's discretion.

Extra guards or picquets, only for irregularities on these duties.

Q.R. VI., 13. If imprisonment and confinement to barracks be both awarded, the two together must not exceed twenty-eight days.

If a man, whilst confined to barracks, commit a second offence, he may be awarded a second punishment of twenty-eight days' confinement to barracks, to commence at the expiration of the first; but he cannot get more than fifty-six days' continuous confinement to barracks, nor can he have more than seven days' continuous imprisonment by order of the commanding officer except as above.

A scale, according to which fines for drunkenness are to be awarded, will be found in Queen's Regulations VI., 15, but the law only limits it as not to exceed ten shillings.

The case of a soldier drunk—not on duty—*must* be dealt with summarily by the commanding officer, and not sent for trial by court martial, unless the soldier was guilty of drunkenness after being warned for duty, or had been guilty of drunkenness on not less than four occasions during the preceding twelve months.

A.D.A. 175. This does not apply to a non-commissioned officer.

Punishment drill must not exceed one hour at a time, or four hours a day, under any circumstances. Q.R.VI., 14.

A commanding officer cannot punish a non-commissioned officer. Should he wish him punished, he must send him for trial to a court martial. Stopping leave and not recommending for promotion are *not* punishments. Leave is a privilege, not a right. Promotion is a reward. These remarks apply equally to officers, who may be sent to extra parades, &c., to learn their work, although a commanding officer cannot award them punishments. Q. R. VI., 5.

The commanding officer may, *if he think fit*, delegate to officers commanding troops or companies the power of awarding confinement to barracks not exceeding seven days. Such punishments are to be always brought to his notice, and approved by him. Q. R. VI., 18.

Such officers have no power of punishment, unless the commanding officer choose so to delegate his power.

An acting non-commissioned officer cannot be reduced by his commanding officer, but must be tried by court martial.

NOTE.—*Where the expression "beyond seas" has been used in this chapter it means out of the United Kingdom, the Channel Islands, and the Isle of Man.* A. D. A. 181.

A commanding officer may, without reference to superior authority, dispose summarily of, or try by regimental court martial offences under sections 11, 15 (except absence without leave over twenty-one days), 19, 24, and 40. Charges for other offences must be referred to a superior officer, except delay be considered inexpedient, when he may dispose of it himself; but he must at once report having done so, and state his reasons. Horse Gds. G. O. 41. 1 April, 1880.

CHAPTER IV.

PROCEEDINGS BEFORE TRIAL.

A. D. A. 45. A PERSON subject to military law charged with an offence may be taken into military custody, and the charge must be investigated without unnecessary delay by the proper military authority, and the prisoner either released, punished by his commanding officer, or sent for trial.

In the case of officers or soldiers not on active service, if a delay of more than eight days occurs before a court martial for the trial being ordered to assemble, a special report has to be made explaining the delay, and a similar report must be made every eight days till either a court martial be assembled or the prisoner released.

NOTE.—*Military custody means either arrest or confinement.*

Q. R. VI., 27. The Queen's Regulations direct that a soldier is not to be kept a prisoner more than forty-eight hours, exclusive of Sundays, without having his case enquired into, and either disposed of by commanding officer, or reported to superior authority.

For minor offences a soldier is not to be made a prisoner, but ordered to attend at the next orderly room.

Q. R. VI., 5. Non-commissioned officers are to be placed under arrest, not to be sent as prisoners to the guard room, except in extreme cases where such a step is necessary for their safe custody, or if they are violent.

Similarly, an officer is simply ordered under arrest, unless there be a probability of his ab-

sconding, or some other good reason, in which case a guard may be placed over him.

As a rule, no one but the officer responsible for discipline should place another officer under arrest—*i. e.*, the commanding officer, or an officer conveying an order of arrest from him; except in cases of frays and disorders, when any officer can place another, even his senior officer, under arrest; and if, under these circumstances, such officer refuse to go under arrest, or strike or offer violence to such officer, he is liable to be cashiered. **Arrest of officers.** A. D. A. 10, 45.

This is the *only* case in which, by the Army Discipline Act, a junior officer is authorized to place his senior under arrest.

In such glaring cases as a senior officer coming upon parade drunk, the next senior has been held to be justified in putting him under arrest. It must, however, be some very extraordinary circumstance which would justify a junior in taking so serious a step. In nearly all cases, both of seniors and juniors, it would be quite sufficient to report the matter to the commanding officer.

A junior officer *cannot* refuse to go under arrest when put in arrest by a senior. He *is* under arrest, whether he acknowledges it or not; and if he do not at once proceed to his quarters or tent, he has broken his arrest, and, if tried and convicted thereof, he is liable to be cashiered. A. D. A. 22.

No officer can put another or a non-commissioned officer in arrest, nor can he confine a soldier, if an officer senior to himself be present, except in the case above mentioned.

The rules for officers in arrest will be found in Queen's Regulation VI., paragraph 53.

If a guard be placed over an officer in arrest, this does not free the officer from the responsibility of arrest, nor from the consequences of breaking his arrest; nor would an officer in charge of such a guard be allowed to permit his prisoner to go out on parole.

A. D. A. 45. An officer commanding a guard, or provost marshal, must receive a prisoner committed to his charge by any officer or non-commissioned officer; but the officer or non-commissioned officer must, either at once or within forty-eight hours, deliver an account in writing, signed by himself, of the offence with which the prisoner is charged.

Q. R. VI., 53. The Queen's Regulations direct that when an officer is placed in arrest by his commanding officer, the circumstances of the case should immediately be brought to the notice of the general officer commanding.

An officer can only be released from arrest by the authority which imposed it, or by the superior to whom it was reported. An officer cannot demand a court martial, neither can he refuse to be released and to return to duty. If aggrieved, he may forward his complaint in a proper manner to superior authority.

A soldier once confined can only be released by the authority of the actual commanding officer; *e. g.*, if confined regimentally, by the officer commanding the regiment or by his authority; if confined in a garrison guard by some officer not belonging to the regiment, by the officer commanding the garrison, or under his authority.

Q. R. 31, 32. Putting arms in a prisoner's hands, or detailing him for a duty, does not condone the offence, if done by error; but if done purposely,

it would condone it. This does not, however, apply to a prisoner having to carry his arms and accoutrements whilst marching.

INVESTIGATION.

As soon as possible after the commission of an offence the commanding officer investigates it. If a minor offence, he disposes of it himself, awarding punishment as authorized by the Queen's Regulations and Army Discipline Act.

If the sentence affect the soldier's pay, and he appeal from it to a court martial, his doing so is no aggravation of the offence.

It has been ruled that if the commanding officer award punishment to a man and then cancel it, and send the case for trial before a court martial, it is illegal. The case must, however, have been *finally* disposed of by him—*i. e.*, the man marched out and released, or his punishment commenced.

If the commanding officer think a court martial necessary, he orders a charge to be prepared (if the one on which the man was brought before him be not correct); and if he intend to try him by a regimental court martial, he simply orders the court. If he considers the case one for a higher court, he makes application to superior authority in the proper form (W. O., 733) for such court martial; and he forwards a *précis* of the evidence, and states the man's character, service, &c., to enable the general or other officer to judge whether the case be a proper one for trial by court martial.

Care should be taken not to prefer vague charges, so as to bring grave offences, apparently, under a section of the Act which awards a smaller punishment than that which is properly awardable for the offence.

Charges, also for minor offences, which the commanding officer might well have dealt with on his own authority, should not be added to grave charges—*i. e.*, a slight charge is not to be tacked on to an important one. It would be, for example, improper to charge a soldier as follows:—

1*st charge.*—Having been drunk on guard mounting parade.

2*nd charge.*—For his rifle having been dirty on that parade; or

1*st charge.*—Desertion.

2*nd charge.*—Being improperly dressed, being in plain clothes.

The soldier should be tried for drunkenness on duty, in the first case; for desertion in the second case; otherwise, if found not guilty of the important crime, a conviction of guilty might still pass on the trifling fault, which, but for the fact of his having been accused of the other crime, would never have been sent for trial before a court martial.

The application for a court martial is addressed to the staff officer of the convening officer—*i. e.*, brigade-major, or assistant adjutant-general, as the case may be.

In India the charge, *précis* of evidence, &c., is, where practicable, sent to the divisional deputy judge-advocate, who submits it to the convening officer with a report thereon, and sends a form of charge or charges, if that sent with the application be not correct.

Where no deputy judge-advocate is available, this is done by the assistant adjutant-general or brigade-major.

The same form of application is used for a general court martial as for a district court martial.

The officer who has the power of convening the court, can either do so or decline to do so, or order the man to be tried by a lower court than that applied for, or direct the case to be disposed of by the commanding officer.

If the general or other officer determine to try the man, he convenes the court in orders and appoints the president, prosecutor, and, where required, the judge-advocate.

The members are not usually named, nor can the prisoner demand to know their names beforehand.

The prisoner is to be given, by a commissioned officer, a copy of the charge or charges, if possible, at least twenty-four hours before the court assembles. If he cannot read, they are to be read over and explained to him by the person who warns him for trial; and the Queen's Regulations direct that he is to be given a list of all witnesses for the prosecution. Q.R.VI.,'58.

His not having been warned, however, would not necessarily invalidate the trial.

SUMMONING WITNESSES.

It is the duty of the deputy judge-advocate, or president when there is no deputy judge-advocate, to summon witnesses required by either the prosecution or the defence. A.D.A. 122, 123.

The form for summoning civilian witnesses will be found in Queen's Regulations, Appendix B.

For military witnesses, a summons is not generally issued; they are ordered to attend.

Q.R.VI., 60. When military witnesses are required, who are not serving in the district or division in which the court martial is held, application is to be made to the adjutant-general, head-quarters.

No one can claim exemption from a summons except the Queen.

Summonses are, however, to be issued with discretion.

If the prisoner should call for an unreasonable number, or for people at great distances, the officer, whose duty it is to issue the summons, may refuse to do so, and leave it to the court to decide.

A summons must always be served personally, either by a non-commissioned officer or a policeman. If at a distance, it would be sent to the nearest military station, or to the civil authorities.

Summonses are always prepared in duplicate; one given and one retained by the server, with a note on it of the place and date of serving made at the time.

A civilian witness who does not attend when summoned, or refuses to answer, or to produce a document legally required, may be punished by any civil court, as if such offence had been committed in that court. The president of the court martial has to send to the civil court a certificate signed by himself of the offence.

If such witness swear falsely, he may be indicted for perjury (or in India for "giving false evidence") before a civil court.

A. D. A. 122. A witness going to, and returning from, a court martial is privileged from civil arrest for debt, &c.

CHAPTER V.

THE president is necessarily the senior officer. He is responsible for decorum being maintained, and every one being treated with proper respect. His powers extend not only over members, but over every body present in court, whether senior to him or not. **President.**

If a contempt of court be committed by a person not subject to military law, the president may certify the offence of such person to a civil court, which may punish the offender. **Contempt of court.** A. D. A. 123.

If committed by a person subject to military law, the offence can be punished by *another* court martial; or if the court think proper, the offender (*unless he be the prisoner then on trial*) may be committed (under an order signed by the president) to prison, with or without hard labour, for a period not exceeding twenty-one days. A. D. A. 28.

The president acts in the name of the court in correspondence, which is signed by him only. In all courts except general courts martial, he usually has to perform the duties of deputy judge-advocate, *viz.*:— **Correspondence.**

1. Administering oaths.
2. Summoning witnesses.
3. Advising the courts on points of law.
4. Writing the proceedings.

If another officer administer the oaths, or write the proceedings, he does so under the president's authority, and by his order.

The president takes the votes of the court, commencing with that of the junior member.

If collected by the deputy judge-advocate, as is generally the case where there is one, the deputy judge-advocate is merely assisting the president in his duties, and so collecting them by his order.

Casting vote. A.D.A. 53. On all matters, except the finding, the president has a second or casting vote, in case the votes should be equally divided.

Finding. If an even number of officers are on the court, and the votes are equally divided, the prisoner gets the benefit of the doubt; *e. g.*, if half vote for "guilty," and half for "not guilty," a finding of "not guilty" is to be recorded.

Sentence. If divided equally on the sentence, the president has a casting vote.

The practice of adding up the number of days each member votes for, and then striking an average and recording this, is, in my opinion, illegal.

The result is to record a sentence which has, probably, not been voted for by any one member of the court; and it renders it possible for a senior member, by voting for more than he would have done, did he not know that an average would be struck, to bring the average up to what he wishes.

Should more than one kind of punishment be voted for, the majority would decide the nature of the punishment, and then the votes would be taken again as to the amount; *e. g.*, if, on a general court martial of nine members, four vote for penal servitude and five for imprisonment, the imprisonment is carried, and the votes must be taken again to decide the amount of imprisonment. Again, if now, three vote for two years, four for one year, and two for 168 days, there is a majority of six to three,

that it shall not be more than one year, and of seven to two, that it shall not be less than one year. The question should then be put—"Shall it be 365 days?"

Every sentence must thus be carried by an absolute majority.

A. D. A. 53. **Death, &c., of president.**

Should the president be taken away by death, sickness, &c., the court must adjourn for the orders of the convening officer. Should there have been more than the minimum necessary number on the court, so that the number remaining be sufficient, the next senior member *may* (if qualified) be *appointed* president, and the proceedings go on; otherwise the court must be dissolved. The next senior member cannot take the place of president without being so appointed.

Absence of member.

Should a member become unavoidably absent the court may go on without him if the minimum number remain, a certificate of the cause of his absence being attached to the proceedings. To meet this possibility, one or two extra members are usually put on the court. It must be noted that no member, who has been absent during any part of the proceedings, can again take his seat.

If the number of members fall below the legal minimum the court must be dissolved. If the prisoner be so ill, before the finding, that it is impossible to proceed, the court must be dissolved.

No proceedings can go on in the absence of the prisoner.

When a court has been dissolved, the prisoner may be tried again.

Recommendation to mercy.

If the prisoner be recommended to mercy, such recommendation must be attached to, and form part of the proceedings, and is to be promulgated and communicated to the prisoner at the same time as the finding and sentence.

Members have merely to give their votes, and award the amount of punishment.

Any member may suggest a question to be put by the court—*i. e.*, by the president, in the name of the court; but a member cannot put a question direct.

The Bengal Regulations recognize a questioning by deputy judge-advocate after cross and re-examination, and before the examination by the court; but the Queen's Regulations give no authority for his putting any question except through the court, or with the permission of the court.—See Queen's Regulations, Appendix B, where provision is only made for a witness being—

examined by the party calling him;
cross-examined by the opposite party;
re-examined by the party calling him;
examined by the court.

Q. R., Appendix A, 10.

Nor is there any mention of such power or duty in the list of his powers and duties in the Queen's Regulations.

DEPUTY JUDGE-ADVOCATE.

Deputy judge-advocate.

A. D. A 50.

For his powers and duties, see Queen's Regulations, Appendix A, 10.

He cannot be—

(*a*). The prosecutor.
(*b*). A witness for the prosecution.
(*c*). The prisoner's commanding officer.
(*d*). The officer who investigated the case.

He *may* be called as a witness for the defence.

If called as a witness for the defence, the minute of his examination would be written by the president who would also swear him.

He summons witnesses, writes the proceedings, administers the oaths, and advises the court on points of law.

If he give his advice and the court decline to take it, he has no right to enter the fact in the proceedings, unless directed to do so by the president; but he should state the fact and the circumstances in a covering letter, when forwarding the proceedings to the judge advocate-general.

In a *closed* court his advice is confidential. When the trial is completed, he forwards the proceedings to the judge advocate-general.

He is sworn, but only not improperly to divulge the sentence of the court, or the individual opinion of any member.

He always remains in court at deliberation, &c., and sums up at the end; but, of course, has no vote.

The warrant of the deputy judge-advocate may, at any time, be revoked by the authority which issued it, and he may be relieved during the trial by a substitute duly appointed; but the new deputy judge-advocate must be at once sworn.

The judge advocate-general and deputy judge advocate-general in England are civilian lawyers, but deputy judge-advocates are always military men. The judge advocate-general and his deputy form a sort of final court, which has the power of upsetting, or "quashing" as it is called, all court martial proceedings.

PROSECUTOR.

Prosecutor. The prosecutor must be a person who is himself subject to military law, and is usually a commissioned officer.

The duties of prosecutor used to devolve on the person who originated the charge. It is not necessarily so now; any person himself subject to military law may be detailed for the duty.

A. D. A. 50. The prosecutor cannot be a member of the court, nor can he be the deputy judge-advocate or the interpreter.

The prosecutor cannot be changed without the authority of the officer who appointed him.

Q. R., Appendix B. The Queen's Regulations direct that, "if possible, no officer who is to be called as a witness is to be appointed to act as prosecutor."

If he be a witness he would be sworn first, and would state his evidence, being the only exception to the rule that the evidence must be given by question and answer.

Informant or complainant. A person not subject to military law may sometimes appear as "informant" or "complainant," but a military prosecutor would be detailed. The "complainant" would give his evidence first, and then remain in court to assist the prosecutor, but he must not make remarks.

The prosecutor is not sworn *as such*, and he leaves the court whenever it is cleared. His duties are—

Duties of prosecutor.

1. To prepare and conduct the prosecution.
2. To furnish the list of witnesses to be summoned.
3. To address the court, when necessary, at the opening of the prosecution, and examine the witnesses for the prosecution.

4. To cross-examine the witnesses for the defence.

5. Should the prisoner not adduce any evidence for the defence, the prosecutor will sum up the evidence for the prosecution, as soon as the last witness has withdrawn.

6. Should the prisoner have such evidence to adduce, the prosecutor will defer this summing up till the prisoner has entirely completed his defence and addresses, when he, the prosecutor, will reply.

There is no objection to his being a witness as to previous convictions. He generally *is*. The absence of the prosecutor at any stage of the proceedings would not affect their legality.

PRISONER.

Prisoner.

No proceedings in open court can, as a rule, take place in the absence of the prisoner. If he were ill, the court would have to adjourn.

If the prisoner persist in outrageous conduct, disturbing the proceedings of the court, he may be warned that unless he desist, he will be removed, and the proceedings go on without him.

It is the custom that the prisoner should not be handcuffed, or confined in any way; but if he be violent, there is no law against such restraint.

Legal advisers.

Legal advisers are not recognized; but the prisoner is allowed a "friend," who may be a barrister, to assist him. This friend, however, may not address the court, nor may he take any part in the proceedings.

When the prisoner is so assisted, the prosecutor is generally allowed the aid of a lawyer also, but application has to be made for permission

to incur the expense. This is not usually granted in India, where there are so many deputy judge-advocates.

INTERPRETERS.

Interpreter. In India there are officers regularly appointed. If an interpreter be required, he must be sworn, when called into court, to interpret.

Oath interpreter. The oath to be administered to an interpreter will be found in the rules for procedure, No. 18.

A member of the court may act as interpreter, being separately sworn as such. The interpreter should not be the deputy judge-advocate, the prosecutor, a witness in the case, or any interested person.

CHAPTER VI.

PROCEEDINGS ON TRIAL.

FOR form, see Rules of Procedure, page 14. The form of procedure in all courts martial is essentially the same.

The following remarks refer to general courts martial, but apply also, with obvious modifications, to lower courts.

The officers detailed for the court assemble pursuant to order, and should see that all the necessary books, papers, &c., have been provided.

All official books and orders having reference to courts martial are to be laid before every court when sitting. Q.R. VI.,57.

The president takes his seat at the head of the table, and the senior member on his right, the next senior on his left, and so on.

If an officer be promoted during trial, he would take his seat next day according to his new rank; except in case of his becoming senior to the president, who cannot be displaced, but would remain president till the trial was over.

The court should read over the charge, and, if there be any doubt, decide whether they are competent to deal with the case. If they consider that they are *not* so, they should adjourn, and report to the convening officer.

☞ NOTE.—*The charge can be amended any time previous to arraignment. The court cannot afterwards alter the charge, but can make a "special finding," omitting any part of the charge not material to the merits of the case.—See "Special Finding."*

The court is then opened, and the prisoner brought in under escort; the prosecutor and witnesses also appear in court.

The court is an open court—*i.e.*, when not closed for deliberation, any one may be present; *e. g.*, it would be illegal to exclude *any one*, such as a newspaper correspondent. The court may, however, forbid the publication of the proceedings during the course of the trial.

Rules. The hours of sitting are from 6 A.M. till 4 P.M.
Procedure 8. They may, however, sit after 4 P.M. if there be a reason, which reason must be recorded. For an immediate example, where the convening officer certifies to the necessity, it may sit at any time.

The order for assembly of the court, and the warrants or order appointing the president and judge-advocate, are produced and read.

Challenge. The names of the president and members are
A. D. A. 51. read over, each officer answering "here, Sir," and the prisoner is asked if he objects to any of them. This is called "challenging them."

The prisoner cannot challenge the court generally; he must make his objection to each individual separately, commencing with the president or senior.

Should he object to the president, the objection is recorded on the proceedings, as also any evidence in support of the objection. The president would not vote on the question; the other members vote, and to retain him, *two-thirds* must disallow the objection; otherwise it must be referred to the authority who appointed him, the court adjourning meanwhile.

After this has been disposed of, the court would enquire into any objection he may make

to a member. In this case the member withdraws, and a majority of votes decides it.

If allowed, the president may take in in his place any officer who was "attending" to meet such an occurrence, or adjourn till new members be appointed to make up the required number.

The prisoner must be given an opportunity of challenging such new members, and it must be recorded that this was done.

In enquiring into any objection no oaths can be administered; for, till the court is itself sworn, it cannot administer an oath.

ORDINARY GROUNDS FOR CHALLENGE.

That the member objected to—

1. Had been a member of a court of enquiry on the subject.
2. Had been concerned in investigating the case, or preparing it for trial.
3. Has a personal interest in the case, such as being the owner of property which the prisoner is charged with having stolen.
4. Has previously expressed himself as prejudiced or biassed.
5. Is a material witness.
6. Has not the necessary qualification by service or rank.

In civil law jurors must be *omni exceptione majores*, that is to say, above all suspicion; and so must be the members of a court martial. At the Cape of Good Hope, a soldier was tried for stealing from a mess. Officers of the regiment to which the mess belonged were on the court, and it was considered that there was

ground for challenging them. It has been decided to be undesirable, but not necessarily illegal, to put them on the court in such a case.

Observe the difference between things which vitiate trial and things for which a member *may* be challenged; *e.g.*, an officer of less than three years' service sitting on a general court martial would vitiate the trial.

It is no ground for challenge that the court has already tried another prisoner for an offence arising out of the same circumstances.

A. D. A. 50. The prisoner's commanding officer, the officer who investigated the case, and the convening officer (except on a field general court martial), the prosecutor, and a witness for the prosecution *cannot* sit on the court.

When challenges have been disposed of, the court is formed by being sworn in. The oath is administered to the president first, and afterwards to all the members collectively. The oath will be found in Army Discipline Act, section 52. The president then administers the oath to the judge-advocate (see same section).

The charge is then read, after which the witnesses are ordered to withdraw, and the prisoner called upon to plead. He may plead—

(1). Not Guilty.
(2). Guilty.
(3). Refuse to plead.
(4). Plead in bar of trial.

1. If he plead "not guilty," the trial proceeds.

2. If he plead "guilty," the court are still to take a sufficient amount of evidence to give a full knowledge of the circumstances, in order to award punishment. His pleading

"guilty" suffices to cover all flaws in evidence, but does not cover any illegality, and he may still make a defence, and bring evidence in extenuation, and may cross-examine witnesses.

3. If he refuse to plead, a plea of "not guilty" should be recorded. Q. R., Appendix A. 5.

4. Pleas in bar of trial.

The commonest are— Pleas in bar of trial.

(*a*). That the court has no jurisdiction over the prisoner.

(*b*). That the prisoner is not amenable to military law.

(*c*). That the court is not legally constituted.

(*d*). That the prisoner is only triable by a higher court.

(*e*). Lapse of time of limitation.

(*f*). That the prisoner has already been tried for the offence, or punished by his commanding officer. A. D. A. 46, 150.

(*g*). Condonation.

Any such plea must be fully heard and investigated, evidence being taken *on oath*, on both sides, if necessary, before deciding it.

If several prisoners are tried together, they must be arraigned and called on to plead separately, must be each asked if they object to the president or members, must each have the opportunity of cross-examining, and the defence, finding, and sentence must be recorded separately.

The prisoner may, if he think proper, reserve his objection to any illegality in the proceedings till he makes his defence, and it is then admissible; or, if the illegality were discovered after the trial was over, it would suffice to invalidate his conviction; *e. g.*, if an officer under three years' Q. R., Appendix A. 1.

service had been permitted to sit on a general court martial, if this were discovered subsequently the conviction would not be valid.

A. D. A. 46, 50. (*f*). "Punishment already awarded." An officer officially reprimanded. A soldier whose case has been disposed of in the orderly room.

(*g*). "Condonation" means pardon, and must be intentional; *e. g.*, putting arms in a prisoner's hands for duty would condone the offence if done intentionally, not if unintentionally done. If a soldier were confined and subsequently released, he can still be tried, provided it were not done with a full knowledge of the circumstances, and the releasing him must have been done by competent authority, or it would not be condonation.

Insanity of prisoner during trial. If the prisoner shows signs of insanity, the court should take medical evidence on oath; and if the insanity be proved, find to that effect, and adjourn. A mere medical certificate is not sufficient.

Utter want of specification in the charge as to the matter, or time where time is essential, may be brought as a bar to trial on those grounds.

When these pleas have been disposed of, the trial proceeds.

It is a general rule to preclude witnesses on both sides from being present at the examination of other witnesses; and it is on this account that the prosecutor, if a witness, must give his evidence first; and, similarly, if the prosecutor desire the presence of the complainant to assist him in the examination of other witnesses, such complainant has to give his own evidence first.

Rules: Procedure 46. The prosecutor may, if he wish it, make an opening address, after which he calls his wit-

nesses. He must not introduce into his address any matter foreign to the charges; nor may he insinuate imputations not implied by them. "No reproachful words are to be used to the prisoner." This address must be written at length, and either recorded in full in the proceedings, or signed by the president and deputy judge-advocate, and attached to the proceedings.

Examination of a witness.

A witness is called into court and sworn; whilst being sworn he removes his cap and glove, and when sworn, he, if a military man, puts them on again. (This is, of course, in the case of Europeans.) He remains standing, unless sick, &c., when he may be given a seat.

A. D. A. 25, and 32 & 33 Vic. c. 68, s. 4.

Every member of the court must be present during the examination of witnesses; for, as it has been said, "even the countenance, looks, and gestures of a witness add to or take away from the weight of his testimony." The examination is to be conducted by question and answer. The evidence is to be taken down in the first person, and, as nearly as possible, in the words of the witness. The witness is sworn by the judge-advocate, where there is one. If the witness have conscientious objections to an oath, he may make a solemn affirmation, which, however, renders him equally liable to punishment for perjury if he swear falsely as an oath would have done.

B. A. R.

Natives of India are affirmed, except Sikhs, who are sworn.

Definition of an oath.

An oath is an outward pledge given by the person who takes it, that his attestation or promise is made under an immediate sense of his responsibility to a divine being, who, according to his belief, will be displeased at being called upon to witness the utterance of a falsehood.

Witnesses are sworn according to the form they deem the most solemn: Church of England witnesses on the Bible; Romanists on the crucifix, or on a cross marked on the cover of the Bible; Mahomedans are sworn on the Koran, either kissing it, or putting it on their heads; in India they are solemnly affirmed; Jews are sworn on the Pentateuch, &c.

An oath may be administered to the witness by a minister of his own religion, if the prejudices of the witness render it desirable.

A Jew wears his hat in the synagogue, and, therefore, keeps it on whilst sworn. Jews regard no oath as binding, unless they have at least *one* hat on when they take it. When the witness has been sworn, his evidence is elicited by questions from the party calling him; *e. g.*, if for the prosecution, by the prosecutor. If a question be objected to, and not withdrawn, it is entered on the proceedings; and the court, after hearing the objection, decide whether it shall be put. In any case it must be entered on the proceedings, and not expunged. Great caution should be observed as to rejecting questions put by the prisoner. The judge advocate-general, Mr. Mowbray, has written: "It is a matter of great importance that a prisoner on trial by court martial should be restricted as little as possible in the examination of his own witnesses, or in the cross-examination of those called by the prosecution, as an error in this respect by the court may invalidate the whole proceedings." An example of this occurred at Bombay in 1874, at a general court martial on Lieutenant E., who got off in consequence.

Examination-in-chief.

A witness is always examined first by the party producing him; this is called the examination-in-chief; he is then, usually, cross-examined by

the opposite party; he may then be re-examined to re-establish his credibility, or on any fresh matter introduced by the cross-examination, and finally the court may put any question they think proper. It is then usual to read over to the witness the record of the evidence he has given, to see whether it is correctly recorded. No erasure, obliteration or addition is allowed, but any correcting statement is to be entered separately.

Cross-examination. Re-examination.

When the prisoner declines to cross-examine a witness, it is always to be so recorded in the proceedings. In joint trials record that each prisoner so declines, or as the case may be.

The court may recall a witness, and question him, at any time, subject to the rule that, after the prosecution is closed, it shall not (except in special circumstances), recall a witness for the prosecution to prove a fact material to the charge.

When the last witness for the prosecution has withdrawn, the prisoner is asked whether he intends to call any *witnesses* for the defence or not. (The question is thus worded in the form in the rules of procedure, but in paragraph 29 the expression is *adduce evidence*, from which it appears that if he adduce any evidence, documentary or oral, the prosecutor will wait till after the prisoner has completed his defence, and then give his second address or reply.)

This question is to be put by deputy judge-advocate in the name of the court.

Rules. Procedure 29.

If the prisoner have no such evidence to adduce, the prosecutor goes on and makes his final address, summing up his evidence. Then the prisoner addresses the court in his defence; and then the deputy judge-advocate sums up.

If the prisoner have witnesses the prosecutor does not make his second address till after the prisoner has finished his defence; but the prisoner makes his opening address, calls his witnesses, and makes his closing address; the prosecutor would then reply, after which the deputy judge-advocate would sum up.

In the rare cases in which the prosecutor is allowed to call witnesses on making his reply (which would be only to re-establish the credibility of his witnesses, or to rebut new matter which the prisoner might have introduced in his defence, or to impeach the credibility of the prisoner's witnesses), the prisoner would not make his second address till after such witnesses had been called and given their evidence.

Should the prisoner ask for time to prepare his defence, reasonable time would usually be granted.

Should he wish to call witnesses not already summoned, it rests with the discretion of the court to grant adjournment for that purpose or to refuse it.

Adjournment.

Should an adjournment take place it must be properly recorded: *e. g.*—

"At.....o'clock the court adjourn until..... o'clock on the.....of.....188...

"On.....day, the.....of.....188...at.....o'clock, the court re-assemble pursuant to adjournment: present the same members as on....."

The day of sitting must be here recorded in the margin; *e. g.* "second day," "third day," &c.

A line must be ruled right across the page between the recorded minutes of every two witnesses, after the words "the witness withdraws."

Defence.

When the prosecutor has called all his witnesses, the prosecution closes, and the prisoner

is placed on his defence. Whatever he may have pleaded, "guilty" or not guilty," he is entitled to make a defence, which may be in extenuation of an admitted offence.

The defence may take various forms, *viz.*—

(*a*). Disproving the facts of the charge.

(*b*). Showing the evidence for the prosecution to be unworthy of belief.

(*c*). Showing absence of criminal intent.

(*d*). Proving insanity at the time of commission of the act, or that it was done under compulsion. Pleas in bar of trial may be brought up again in the defence, or the defence may be only in mitigation.

Misfortune or chance, where there has been no culpable negligence, is a defence; but if the act was unlawful, then chance only serves as a plea in mitigation.

Ignorance of the law is *no* defence.

Drunkenness is an aggravation of the offence.

The defence may be written or oral. If a written defence be handed in, it should be read, marked, and signed by the president and deputy judge-advocate, and attached to the proceedings.

If the prisoner wish his defence read for him, it must be done by a person himself subject to military law. No civilian may address the court, or put questions to witnesses.

Great latitude must be given to the defence; but the prisoner must not be allowed to make statements disrespectful to the court, or to use coarse and insulting language, or to animadvert at all upon persons who have not been before the court.

The witnesses for the defence should be called—

1*st.*—To disprove the charge.

2*nd.*—With reference to character.

If the prisoner make a statement, or tender a document which, if proved, would apparently, benefit his case, he should be advised (by deputy judge-advocate or court) to adduce evidence of it, and the proceedings should show that such advice has been given.

The defence being an unsworn statement, unproved documents may be received for what they are worth; but any document tendered to disprove part of the prosecution must be duly proved before it can be considered as evidence.

The prisoner may open his defence with an address, then call his witnesses, and then make his final address. If the prosecutor call witnesses in reply, the prisoner does not make his second address till after they have been called. After each witness for the defence has given his evidence, the prosecutor may cross-examine, and then the prisoner may re-examine on such points as have been touched upon in cross-examination. The court may caution the prisoner, that the line of defence he is pursuing is not likely to operate in his favour, but may not refuse to hear him state arguments, which, notwithstanding such caution, he may persist in putting forward.

The defence may rest entirely on pleas in bar of trial.

INSANITY.

Blackstone. The court must be satisfied of "an absolute dispossession of the free and natural agency of the human mind;" if the accused has lucid intervals, and reason sufficient to know right

from wrong, he is answerable for what he does in those intervals. The judges have laid down that, "if the accused was conscious that the act was one which he ought not to do, and if that act was contrary to the law of the land, he is punishable." If he has delusions, he must be judged as if those delusions were true; *e. g.*, if, in delusion, he believed another man to be trying to take his life, and, in imaginary self-defence, he killed that man, he could *not* be punished; but if he thought that the other man had wrongfully got his estate, and under this impression killed him, he *would* be liable to punishment.

MISFORTUNE OR CHANCE.

If an accidental mischief happen from the performance of a lawful act, the party stands excused from all guilt; but if the act be unlawful, he is then answerable for the consequences: *e. g.*, if a soldier, at target practice, miss the target, and accidentally kill a bystander, he is not guilty of any crime; but if a man fire out of a window in a town at a dog in the street, and accidentally kill a person, he would be guilty of manslaughter.

Compulsion in such cases as a man being compelled to join mutineers, on pain of immediate death if he attempted to leave them, would be a defence. **Compulsion.**

Reply: If there be no evidence for the defence there is no reply; the prosecutor's final address being given at the end of the prosecution. **Reply.**

If there *be* witnesses, the prosecutor replies after the defence, and may call witnesses then, but only about new matter which may have been introduced by the prisoner in his defence, or to re-establish the credit of his witnesses. No additional proof of the original matter may be

brought forward. He may impeach the credibility of the prisoner's witnesses. *In this last case only* can the prisoner call witnesses to contradict those called for the reply; he *may* re-establish the credit of the witnesses so impeached by evidence.

Reply how limited.

The prosecutor, in his reply, must not state any thing in the way of new facts relating to the case, or which partake of the nature of giving evidence. The finding of a general court martial at Rawul Pindi, in 1867, on a paymaster, was set aside, because the prosecutor, in his reply, stated new facts relating to the case, thus giving fresh evidence, adduced at the wrong time after the prosecution had closed and given by a person not on oath and not open to cross-examination.

Summing up.

When the prosecutor has finished his reply, the deputy judge-advocate sums up impartially, and lays down the law on any legal questions which may have arisen. The court generally adjourns to give him time to prepare the summing up. The summing up is written, but must be read in open court, and signed and attached to the proceedings like any other document. In it the deputy judge-advocate states clearly the several issues on which the court have to find, and points out the evidence for and against each; but must carefully abstain from giving any opinion as to whether such issue be proved or not by such evidence. He points out any variances and discrepancies in the evidence on either side, but draws no conclusions as to the effect thereof, nor as to which party he considers most worthy of belief.

The court is then cleared for the finding.

CHAPTER VII.

FINDING.

When the court is cleared for the finding, the deputy judge-advocate remains in court, but can take no part in the proceedings unless consulted on legal points.

The court can recall a witness and put any question to him; but the court must be re-opened, and the witnesses can be cross-examined by either party.

The votes are taken separately on each charge by the president, commencing with the vote of the junior member. When there is more than one prisoner, the votes are taken separately for each. The president has no casting vote. A majority carries the finding. Should the votes be equally divided, a finding of "not guilty" should be recorded. If acquitted, the finding is to be simply "not guilty," the term "acquitted" is not to be used; and such findings as "not proven," or "honorably acquitted," are wrong. The court may, if they please, write a separate letter saying that, in their opinion, there is not the slightest blemish upon the prisoner's character, &c. Q. R., Appendix B.

If the finding be "not guilty" with reference to any charge, such finding does not require confirmation with reference to such charge, nor can revision be ordered. A. D. A. 54.

If the finding be "not guilty" of all the charges, it is pronounced at once in open court, and the prisoner is discharged.

Special findings.

If the prisoner was insane when he did the act, the finding should be, "the court do find that the prisoner No.....Rank..... Name.....Regiment....., was of unsound mind at the time of committing the offence, and do, therefore, find him "not guilty of the same."

This is a special finding, which is a term applied to any finding except "guilty," or "not guilty.

The court may find the prisoner guilty of the whole or of a part of the charge. In the latter case they should find "guilty of the charge with the exception of.....;" but if the part to be omitted be the essence of the charge, a verdict of "not guilty" should be recorded.

A. D. A. 55. A court may find a prisoner guilty of a minor offence of the same class; *e. g.*—

Charge.—Violence to superior in the execution of his office.

Finding.—Violence to superior officer.

Charge.—Desertion, or attempting to desert.

Finding.—Absence without leave.

Charge.—Scandalous conduct unbecoming the character of an officer and a gentleman.

Finding.—Conduct unbecoming an officer, and to the prejudice of good order and military discipline.

Thus, in the first case, the charge was for a crime punishable with death as an extreme penalty; but, under the finding, an officer would be only liable to be cashiered, &c., and a soldier could not get more than two years' imprisonment with hard labour, and forfeitures, or discharge with ignominy.

Similarly, in the last instance given, the charge was one for which the officer, if convicted, *must* be sentenced to be cashiered, but the finding was for an offence for which it is *not* imperative on the court to award cashiering.

Remember, however, that a court can never convict of *more* than is stated in the charge, although it may convict of *less*. It may convict of absence without leave when the charge was desertion; but it cannot convict of desertion when the charge was only for absence without leave. Nor can the court convict of an offence of a different character; *e. g.*, a soldier charged only with desertion could not be convicted of drunkenness or insubordination. He can only be convicted of *the same offence as he is charged with, but in a lower degree.*

It is specially enacted that a prisoner charged with stealing may be found guilty of embezzlement, or fraudulently misapplying, and *vice versâ*; also on a charge for deserting he may be found guilty of attempting to desert, and *vice versâ*. A. D. A. 55.

A court may correct minor errors of date, or place, &c., in the finding; *e.g.*, first charge—guilty, with the exception that the offence was committed at Meean Meer, instead of Lahore, and on the 1st March 1875, instead of the 29th February 1875, as stated in the charge. **Correction of minor errors in finding.**

PROCEEDINGS BEFORE SENTENCE.

If the finding be "guilty," the court is not re-opened in the case of an officer, except there be previous convictions. In the case of a soldier, it must, necessarily, reopen, as the Queen's Regulations require certain evidence to be taken as to the prisoner's age, character, service, decorations, &c., *for the guidance of the court in awarding punishment, as well as for that of the* Q. R., Appendix A. 8.

confirming authority in sanctioning the award. This evidence, together with that of previous convictions, if there be any, and of previous instances of drunkenness (in the case of the trial of a soldier for drunkenness) is to be given orally on oath, by a person himself subject to military law, who, when possible, is to be a commissioned officer who is not a member of the court. The points deposed to in the case of a soldier are—

1. Previous convictions (if any).
2. Previous instances of drunkenness (in case of a soldier tried for that offence).
3. Whether he be under any sentence at the present time.
4. His general character.
5. His age.
6. The date of his attestation.
7. Service allowed to reckon towards discharge.
8. Any decorations, good-conduct badges, or honorary rewards he may be in possession of.
9. How long has he been in confinement in respect of this trial.
10. In cases of desertion the question is to be put—"Did he surrender, or was he apprehended?"

Q. R. Appendix B.

It is no longer necessary to warn a prisoner that his former convictions will be brought in evidence against him.

Duly authenticated civil convictions as well as military ones may be produced against him. Any conviction may be bronght up, even before he entered the service, if you have them; *e.g.*, in the case of a man who enlisted twice, convic-

tions during his first period of service could be brought against him.

The court martial, or defaulter book, or a certified copy therefrom, is good evidence of a previous conviction. Civil convictions may be proved from the court martial or defaulter book, if entered in them, or by a certificate from the civil court, or by certified copies of these documents. **Previous convictions, how proved.**

Evidence of former instances of drunkenness is to be given by the officer whose duty it is to prove former convictions, &c., and in the following terms:—

"On reference to the.....defaulter book now laid before the court, it appears that the prisoner's name has been recorded therein for the crime of drunkenness.....times since his enlistment." The court merely record this evidence; a certified copy of the entries in the defaulter book is no longer needed, unless specially ordered by the convening officer.

The certified copies which are to be received, mentioned above, are always read out in open court, signed by the president and deputy judge-advocate, and attached to the proceedings, being also lettered to distinguish them.

The prisoner may figure in these certificates under different names, having assumed *aliases* and false names. This is no matter so long as the court be satisfied of the identity of the prisoner with the person therein described.

Character is to be given *generally—i. e.*, as "very good," "good," "fair," "indifferent," "bad," or "very bad," but is not to go into any particulars. Such answers as "a steady man, but useless as a non-commissioned officer;" "a good soldier, but too fond of drink," are forbidden by the Queen's Regulations, which Q. R. VI., 36.

direct that the terms above enumerated are to be adhered to. No evidence of character is taken in the case of an officer.

Exceptional case. Memo. by J. A. G., Bombay, No. 1069, 30th Dec. 1871.

In civil trials by court martial in India under Army Discipline Act 41, the certificates usually attached to the proceedings are not required; and no enquiry should be made after conviction as to the prisoner's former convictions or general character. The reason of this is, that the sentence is passed under the civil code, and not under the Army Discipline Act.

Q.R.VI., 61. H. G. G. O., 100, 1st Nov. 1870. H. G. G. O., 25, 1st April 1873. India G. O. C., 568, 28th Sept. 1870.

For non-commissioned officers and soldiers a medical certificate has to be attached to the proceedings, stating whether the prisoner is fit or unfit for hard labour (and, on active service, corporal punishment). Also, on a trial for desertion, whether the man is fit or unfit for the service.

Warrant officers are exempt from medical examination previous to trial.

The court should take care that the medical certificate is dated on the day on which sentence is passed.

SENTENCE.

A. D. A. 16.

If an officer be convicted of scandalous conduct, unbecoming the character of an officer and a gentleman, no deliberation is necessary, for the punishment is peremptory, *viz.*, that he "*shall* be cashiered."

This is the only peremptory punishment; in all other cases the offender is declared to be on conviction *liable* to the punishment laid down.

Each member, notwithstanding that he may have voted for "not guilty," must vote for punishment, if the court have found the prisoner

"guilty," and should award such punishment as the offence merits. Some punishment *must* be awarded.

At a general court martial the deputy judge-advocate is responsible that the sentence is properly worded, and that it is within the powers of the court to award.

The court should decide the nature of the punishment first, afterwards the amount. A sentence of death requires a majority of two-thirds; on a field general court martial it must be unanimous.

If the prisoner be already undergoing sentence for previous offences, the court must remember that the sentence they award will begin to count from the day the president signs the proceedings; thus, if he has three months' unexpired sentence to undergo and they wish to inflict three months' additional imprisonment, they must sentence him to six months' imprisonment. Care must be taken that the whole amount of continuous imprisonment does not exceed two years, or the sentence will be illegal, for an offender cannot be given imprisonment for more than two consecutive years, whether under one or more sentences. A. D. A. 67.

If the medical certificate states that he is unable to undergo hard labour the court may award "*imprisonment with such labour as, in the opinion of the medical officer of the prison, the prisoner may be equal to.*" Imprisonment is always to be stated in days. Q. R., Appendix A. 12.

Reduction of non-commissioned officers. State "to the ranks," or to stated lower grade. Reduction to the ranks should precede a sentence of imprisonment or penal servitude. Trumpeters and shoeing smiths are not reduced; they are A. D. A. 175.

ordered " to revert to the position " of gunner, driver, or private dragoon.

NOTE.—*An army schoolmaster may be sentenced to dismissal or loss of service, but not to reduction; a non-commissioned officer who is not an army schoolmaster may be reduced, but cannot be dismissed.*

A.D.A.175. NOTE 2.—*The commander-in-chief or the commander-in-chief of India or of a presidency may reduce any non-commissioned officer to a lower grade or to the ranks, or may dismiss an army schoolmaster.*

The court has nothing to do with the manner or place of carrying out the punishment.

If prisoners are jointly tried, each should be sentenced separately; or, if all awarded the same punishment, they must be sentenced " *each* to .....&c."

The sentence should give the number, name, and rank of the prisoner as stated in the charge, and the sentence is to be briefly noted in the margin. The proceedings are to be signed by the president and countersigned by the deputy judge-advocate. This is to be done before adjournment. A space of at least half a page is to be left for the remarks of the confirming officer.

A. D. A. 76. A soldier convicted of, or who has confessed and his trial been dispensed with for—

(*a*) Desertion,

(*b*) Fraudulent enlistment,

forfeits the whole of his prior service, and is liable to serve for the time of his original enlistment reckoned from the date of conviction or of the order dispensing with trial.

Service thus forfeited may be restored by the Secretary of State.

A. D. A. 44. A soldier convicted of any crime by a court martial *may* be sentenced to the forfeitures prescribed in Army Discipline Act 44 (7).

A. D. A. 67. Imprisonment and penal servitude count from the date of the president's signature, and if the

sentence be revised and the proceedings signed again, it is from the date of *the first* signature that it begins to count.

Although, for aggravated offences, two years' imprisonment may be given by general courts martial and district or garrison courts martial, yet, for all ordinary offences, it should not exceed six months. Q.R.VI., 21.

Any recommendation to mercy must be attached to, and form part of, the proceedings of the court.

Remarks by the court on the conduct of the prosecutor or witnesses should be made in a separate letter.

The proceedings are then forwarded through the proper channel to the confirming officer.

At home, a general court martial is forwarded by the deputy judge-advocate to the judge advocate-general, who lays it before the Sovereign. *Abroad*, to the confirming officer direct. Rules. Procedure 36.

India.—A general court martial is forwarded by the deputy judge-advocate to the judge advocate-general, to lay before the commander-in-chief. A district or garrison court martial is forwarded by the president to the divisional deputy judge-advocate to lay before the confirming officer. A district or garrison court martial on a warrant officer is sent by the president to the judge advocate-general, as it has to be confirmed by the commander-in-chief of the presidency. Bengal Regulations.

CHAPTER VIII.

CONFIRMATION.

THE proceedings having been forwarded to the confirming officer, he may either confirm, refuse to confirm, or return them for revision of finding, or sentence, or both.

A. D. A. 54. He cannot order revision of a finding of not guilty on any charge, nor can he recommend an increase of the sentence.

Rules. Procedure 38. His reasons for requiring a revision should be fully stated in the letter or order which is attached to the proceedings. In case he orders a revision, the court would re-assemble, and read the order for re-assembly and the remarks of the confirming officer (the latter in closed court). If any member be unavoidably absent, a certificate explaining the reason must be read, marked, signed, and attached to the proceedings, and if the legal minimum still remain they can go on.

The court may adhere to their former finding and sentence; but if not, if they alter the finding, they must formally revoke *both* finding and sentence, and pass a new finding and a new sentence, although the finding may have been altered only on some trifling or technical ground, and although the new sentence may be, word for word, the same as the former sentence.

It will not do to alter the finding and then state that they "adhere to their former sentence." If they did so, the whole sentence would become null and void; they could not be assembled again to correct their error, for *a court cannot re-assem-*

ble for revision more than once; and the man could not be tried again, inasmuch as he had once been *convicted*. He would thus escape all punishment, except that if the finding were confirmed, it would count as a legal conviction, and be recorded against him, and would carry with it such forfeitures as certain convictions always necessarily entail.

No fresh evidence can be taken at revision, nor can the sentence be increased.

If a member of the court becomes the officer who would otherwise be confirming officer, he cannot confirm such court, but must submit it to some superior officer who has power to confirm such courts.

If the confirming officer refuse to confirm, the trial falls to the ground, and no record of it is made against the prisoner. The only effect is that the prisoner cannot be tried again for that offence by court martial. After confirmation, the proceedings of all general courts martial and district or garrison courts martial go on to the judge-advocate-general. He alone has power to *quash* a court martial. Should he do so, the whole proceedings become null and void, and any record of the trial made against the accused is to be erased.

Completion of proceedings.

After the trial is over the court should look over the proceedings to see that they are in every respect correct. Erasures and interlineations are forbidden, but any small corrections there may be must be initialed by the president.

The questions and answers must be numbered in the margin as Q. 1, or A. 1, &c.

The pages are to be numbered in succession; quarter margin to be left, and in it references inserted to the subject-matter; *e. g.*, "first witness

for prosecution," "defence," &c. The finding is noted in the margin, and the sentence briefly; *e.g.*, "imprisonment, hard labour, 168 days." *In India* proceedings and all annexures must be in duplicate, except for regimental courts martial. Regimental courts martial are to be written on both sides of the paper; other courts on one side only. The separate sheets are to be fastened at the left upper corner by a loose loop of silk, or thread, clear of all writing. Whole sheets should not be used, or, if used, should be split up the back, otherwise when joined at the corner they will not turn over. Finally, the proceedings are docketed longitudinally—*i.e.*, folded longitudinally and a separate blank sheet added, and on the back of this the docket placed thus:

"GENERAL (OR DISTRICT) COURT MARTIAL.
No. 1134, PRIVATE WILLIAM SMITH,
112*th Regiment of Foot.*
Tried at Umballa on the 10th January 1874."

The docket to be on a separate sheet, *not* on the back of the last page of the proceedings.

The charge, as sent by the convening officer to the court, should be folded *separately* and enclosed with the proceedings.

In any of our colonial possessions no sentence of death can be carried into effect until it shall have been approved by the civil governor, except on active service.

In India sentence of death for treason or murder cannot be carried into effect till approved by the governor-general, or the governor of a presidency.

Penal servitude for civil offences has to be similarly approved by—

Governor-general, or governor of a presidency	In India.
Governor of a colony	In a colony.

The confirming officer may sign as "approved and confirmed" (*the word "approved" is not necessary*), or "confirmed" only; or "confirmed but not approved;" or "the finding is confirmed, but the sentence is *not* confirmed" (*this would be done where the sentence was illegal*), or "confirmed with the exception of.....;" or lastly, "not confirmed."

The confirming officer may take into consideration any extraneous information; *e.g.*, he may make enquiries as to any statement made by the prisoner to see if it be true.

The confirming officer may *commute*, *mitigate*, or *remit* the whole or part of the sentence, under the following restrictions, *viz.*:—

Commutation must always be to a less punishment or punishments to which the offender might have been sentenced by the court by which he was tried. A. D. A. 56.

In commuting sentences corporal punishment ranks in the scale with imprisonment *.

The confirming officer may, if he think fit, temporarily suspend the execution of a sentence.

After confirmation the following persons can commute, mitigate, or remit the sentence, *viz.*:—

Her Majesty.
The commander-in-chief.
The officer commanding the district or station where the prisoner may be.
The commander-in-chief in India.
The commander-in-chief of an Indian presidency.
The officer commanding in a colony.

The commuted sentence, if commuted to imprisonment, may be ordered to commence at the expiration of any previous sentence of imprison- A. D. A. 67.

* *Corporal punishment may be commuted to imprisonment, but, in the author's opinion, imprisonment cannot be commuted to corporal punishment.*

ment the offender may be undergoing, so that, however, he may not be given more than two years' consecutive imprisonment altogether.

A. D. A. 54 (5). Confirming officers can suspend execution of the sentence, and refer the proceedings to superior authority.

A. D. A. 172 (2). The proceedings of a court martial on an officer or soldier of Her Majesty's Indian forces may be suspended by the government of any Indian presidency.

EXECUTION OF SENTENCE.

A. D. A. 54 (5). Officers and soldiers acquitted are released at once in open court. A soldier gets his back pay less six pence a day for subsistence during confinement.

Sentence of Death.—The court only sentence to death by shooting or hanging. A soldier would be shot for a military crime, and hanged for murder or other civil capital offences.

A. D. A. 58. *Penal Servitude.*—The necessary steps are stated in the Army Discipline Act, *viz.* :—

In the United Kingdom, the commander-in-chief or the adjutant-general, or the commanding officer of the military convict, makes out the order for his transfer to a penal servitude prison.

Until he has arrived there he may be discharged by order of—

The commander-in-chief.

The adjutant-general.

Any specially "prescribed" officer can issue either of the above orders.

A. D. A. 59. *India and the Colonies.*—The commander-in-chief of the presidency or colony, or the adjutant-general of an Indian presidency, or any "prescribed" officer makes out the order for his transfer to a penal servitude prison.

He may meanwhile be kept in civil or military custody as found convenient.

An order for his removal from one to the other, or from place to place, may be given by—

The committing officer.

The officer commanding the station or district where the convict may be.

Any "prescribed" officer.

Until he has arrived at the penal servitude prison, he may be discharged by order of—

The officer who confirmed the sentence.

The officer who committed him.

Any "prescribed" officer.

In a foreign country these orders are issued by— A. D. A. 60.

The officer commanding the army or force.

The officer who confirmed the sentence of the court.

Any "prescribed" officer.

If before arriving in the United Kingdom the convict is brought into India or a colony, he may be dealt with by the military authorities there as if he had been there sentenced.

The proceedings of a court martial were once lost after being confirmed, but before they were promulgated. It was decided that in the absence of the best evidence the next best was sufficient, which was furnished by a memorandum which had been made by the confirming officer, and the deposition of the president as to the sentence, and the sentence was carried out.

If any person prosecute any person, such as the president or a member of a court martial, for anything he may have done or neglected to do in pursuance of the Army Discipline Act, he must bring the action within twelve months. "Tender of amends" may be pleaded to any such action in lieu of, or in addition to, any other A. D. A. 163.

plea. If the plaintiff refuse this and do not recover more than was tendered, he cannot claim costs subsequently incurred, and defendants are entitled to costs.

Such action can only be brought in a superior court in the United Kingdom, or supreme court in India, or colonial court of superior jurisdiction.

The original proceedings of all general courts martial and district or garrison courts martial are sent to the judge-advocate-general, by whom they are examined. A monthly return of all courts martial is made up to the first of each month, containing the names of all men who have been tried by courts martial during the preceding month. This is sent to the general officer under whose orders the corps is serving. It gives all information about the prisoner, his trial, sentence, &c. These returns are rigidly gone through at head-quarters, and any irregularity is sure to be detected. This serves as a useful check upon minor courts martial.

A. D. A 62, 63. *Imprisonment.*—A person sentenced under the Army Discipline Act to imprisonment may undergo it either in a public prison or in military custody. The order for committal can be made *in the United Kingdom* by—

(*a*). The commander-in-chief.
(*b*). The adjutant-general.
(*c*). The officer who confirmed the sentence.
(*d*). The military prisoner's commanding officer.
(*e*). Any "prescribed" officer.

To remove him from prison, if required as a witness, or to be tried for another offence, &c., the order can be given by—

(*a*). The commander-in-chief.
(*b*). The adjutant-general.
(*c*). The officer commanding the district.

(*d*). Any "prescribed" officer.
(*e*). For sentences passed by commanding officer—The commanding officer.

His discharge can be at any time ordered by the above last mentioned officers, and also by the officer who confirmed the sentence.

Public prison means any prison in the United Kingdom in which offenders sentenced by a civil court can be confined. A. D. A. 63.

To remove a prisoner to any place beyond seas where his corps is serving, the order must be given by— A. D. A. 66.
(*a*). The commander-in-chief.
(*b*). The adjutant-general.
(*c*). Any "prescribed" officer.

In India or a colony the order for committal can be made by— A. D. A. 64.
(*a*). Commander-in-chief of India or Indian presidency.
(*b*). Adjutant-general of India or Indian presidency.
(*c*). Officer commanding the forces in a colony.
(*d*). Officer who confirmed the sentence.
(*e*). Military prisoners' commanding officer.
(*f*). Any other "prescribed" officer.

Order for removal by the same, and by the officer commanding the district or station.

Order for discharge by the same as for removal, except that commanding officers can only order discharge from a commanding officer's sentence.

A prisoner may be removed from a prison out of the United Kingdom to one in it, but not the contrary; nor can a prisoner, who has been in military custody in the United Kingdom and been removed from it, be committed to a prison elsewhere.

Unless specially ordered by the court a prisoner

sentenced to more than twelve months' imprisonment in India or a colony must be sent home.

Soldiers who are to be discharged at the end of their imprisonment should always be sent to civil jails.

The committal is made out on a printed form (W. O. 219). The imprisonment counts from the date of the president's signature to the original proceedings. The date on which the prisoner is released counts as one day.

At home the secretary of state for war, in India the governor-general in council, are empowered to establish military prisons; and they can appoint, or authorize generals commanding to appoint periodical military visitors of such military prisons. It is a capital offence for a soldier to assault such a visitor in the execution of his office. Men sentenced to less than forty-two days are usually confined in cells, either garrison or regimental.

FINES. STOPPAGES.

A. D. A. 134, 135, 136, and 44 (8).

The following penal deductions may be made from a soldier's pay, *viz.*:—

(*a*). Pay for every day of absence during desertion, or absence without leave, or as prisoner of war, or of imprisonment, or of detention on a charge of which he is afterwards convicted.

(*b*). Pay for days in hospital certified by medical officer to have been caused by an offence committed by him.

(*c*). Sum ordered by court martial to make good loss or damage occasioned by misconduct, or, if he has confessed the offence and trial been dispensed with, such sum as may be awarded by the authority which dispensed with trial.

(*d*). Sum awarded by commanding officer or court martial to make good loss or damage of arms, clothing, necessaries, medals, &c.

(*e*). If liquor ration be stopped on board ship, he may be stopped its equivalent in money not exceeding one penny a day for twenty-eight days.

(*f*). Sum required to pay fine awarded him by commanding officer, court martial, or a civil court.

(*g*). Sum ordered by secretary of state for maintenance of his wife or child.

NOTE 1.—*A soldier, after paying for messing, and washing, and stoppages, must be left one penny a day clear.*

NOTE 2.—*A court martial or a commanding officer (when case not tried by court martial) may remit the whole or part of any above mentioned deduction of pay, subject to any orders of the secretary of state.*

NOTE 3.—*Any sum authorized to be deducted as above may be deducted from ordinary pay, or from any sums due to the soldier, in such manner as may be ordered by the secretary of state.*

NOTE 4.—*For deducting pay for absence, &c., a part of a day is not reckoned unless it amounts to six hours or more in any one day.*

FORFEITURES, SERVICE.

A soldier does *not* now forfeit service towards discharge for any absence, or any imprisonment; but, if he is convicted of desertion or fraudulent enlistment, he will forfeit all his prior service and begin again as if he had enlisted at the date of his conviction. The secretary of state may restore all or part of this forfeited service to a soldier performing good and faithful service, or on the recommendation of a court martial.

A general or district court martial may sentence any offender to forfeit any advantage as to pension which he may have earned by past service, or to forfeit all right to good conduct pay or pension on discharge, whether in respect of past or future service. **Royal Warrant.** Clause 167.

A soldier forfeits the whole of his prior service towards pension and good-conduct pay if sen- **Royal Warrant.** Clauses 605*d* and 1128*d*.

tenced by court martial to penal servitude, or to be discharged with ignominy.

OTHER FORFEITURES.

A general court martial or district court martial may sentence an offender to forfeit—

(*a*). Absolutely, or for a period of not less than eighteen months, any good conduct badge, or any good conduct pay which such offender may have earned by past service.

(*b*). Any annuity, gratuity, medal, or decoration which may have been granted to him.

FRAMING CHARGES.

The charges are framed by the commanding officer who investigated the offence, but these charges are liable to revision by the authority which orders the court martial. If there be a deputy judge-advocate, he revises the charges for a general court martial or district court martial.

Great care must be taken in framing them, both to see that no important point be left out, and also that nothing be inserted in the charge which is not likely to be supported by the evidence.

Charges brought before a court martial are not bound by the technical formalities which prevail in other courts of law, but they must be sufficiently specific to enable the prisoner to know what he has to answer, and the court to know what they have to enquire into.

Q.R., Appendix C. The Queen's Regulations contain forms of charges applicable to a large number of the commonest crimes, and it is ordered that charges are to be specific *in names, date, and places.*

Q.R., Appendix A, 3. If a non-commissioned officer or soldier, the prisoner's regimental number, and in any case

the rank and regiment, christian and surnames, must be stated. When the prisoner is charged with any loss or damage, the value must appear in the charge, and be proved in evidence. When the loss or damage is of articles of kit, the value of which is fixed by regulation, the value shall *not* appear in the charge; but when the value depends on the length of time the article has been in use, as in the case of a great coat, the value must be so stated, and the time it has been in wear must be proved in evidence. Rules. Procedure 4.

A mistake in name will not invalidate the trial if there be no mistake about the prisoner's identity. The name should be that by which the man was attested, and by which he is known in the regiment.

The charge must be worded so as to bring it directly under the clause of the Army Discipline Act applicable to it, but should not quote it. Italic headings and marginal references are not part of the Act, therefore they should not be inserted in a charge; *e. g.* the word "insubordination" should never be used in a charge, nor "disgraceful conduct," except under the latter part of section 18, paragraph (5). The charge should be so stated as to show that the conduct charged *is* an offence: *e. g.*, "receiving stolen goods;" it should be "receiving.....*knowing the same to have been stolen.*" Forgery must be "with intention to defraud." Writing another man's name is not forgery, unless with such intention. There is no particular section for forgery, but it could be tried under section 18, as an offence of a fraudulent nature. When money be the matter stolen, the lump sum may be stated; there is now no need to distinguish the amount in gold, notes, &c. Money stolen out of the possession of a person entrusted with it may be

See Q.R., Appendix A.

H. Gds. G.O. 26, 1880.

Q.R., Appendix C, 29.

described as stolen *from* that person; *e. g.*, money stolen from a pay-master or pay-sergeant.

Time and place must be stated correctly in the charge. With regard to time, it need not be more exactly fixed than is necessary for the prisoner's defence, as when the essence of the offence is, that it occurred at a particular time—*e. g.*, in case of a sentry sleeping on his post—you must state "between the hours of.....and....." *viz.*, those during which he was posted as sentry; but you should not state the time more preeisely than this. In other cases the day, "on or about the 12th August 1875," is quite sufficient.

When the offence consists of "words used," the words must be set out at length, and as accurately as possible. It is usual to insert the words "in substance, and to the effect following."

All vague charges must be avoided, and attempts to try an act which is not clearly against the military code. Many acts which might well be the subject of civil actions, are not military crimes. Simple offences, which might be disposed of by the commanding officer, are not to be tacked on as extra charges; *e. g*, insubordination and having neglected to clean his rifle; desertion, and being improperly dressed in the streets.

If an anonymous letter be the subject of the charge, the obnoxious passage, or, if necessary, the whole letter, must be given in the charge. An officer must not be tried for "scandalous conduct," nor a soldier for "disgraceful conduct," without clearly specifying the fact or facts upon which such allegation is grounded.

The charge may be altered by the officer convening the court at any time *before arraignment*; and at any time *before the court is sworn*, he may prefer additional charges. The court is only

sworn as to "the matter *now* before you;" if ordered to try any subsequent charge, they should finish the trial on the original charges, and then be sworn again, and try the prisoner on the later charge.

Several prisoners who have committed an offence in concert may be tried together in all cases (except four mentioned below), in which they do not desire one another's evidence for their defence. If they do, they would apply to be tried separately; and in the interests of justice it should be granted, as, if tried collectively, the evidence of one could not be given for the others.

The words "instant," "ultimo," should never be used in a charge, but the month should be stated. If the offence be one not expressly specified in any section of the Army Discipline Act, whether it be an action or an omission, the charge must be worded so as to bring it under section 40; *e. g.*, making a false statement to commanding officer. If the false statement were a false confession of desertion, or other false statement mentioned in that section, try under section 27; but for any other false statement, try under section 40.

☞ *Never charge a soldier with "having been found drunk;" the offence is being drunk, not having been found out!*

If insubordinate language accompanied an act or acts of violence, it should not form the subject of a separate charge, but be stated as a circumstance in the charge alleging the violence. Q. R., Appendix C, 9.

Soldiers are not to be jointly charged for the following offences, *viz.*:— **Offences not to be jointly charged.**

(*a*). Desertion and absence without leave.
(*b*). Drunkenness.

(*c*). Malingering.
(*d*). Perjury.

Disobeying the lawful command of a superior.—The command must be given in the charge.

Alternative charges.—A man may be tried on alternative charges when they refer distinctly to the same offence, but may not be tried on a disjunctive accusative charge. It is irregular to frame charges in the disjunctive, so as to include two offences; thus, in a case of stealing or receiving stolen goods knowing them to have been stolen, *two* charges, one for each offence, must be preferred; and charges under section 24, for making away with, or losing by neglect, articles of kit, are to have a separate charge for each issue.

NOTE.—*Of course a prisoner cannot plead "guilty" to all the alternative charges, as, if guilty of one, he must be innocent of the others. Similarly, the court can only convict on one of several alternative charges.*

In 1867 a store-keeper was convicted, and sent to jail for "embezzling or fraudulently misapplying." The Queen's Bench released him "because the charge and conviction were in the alternative, without any certainty as to either of the two charges in the disjunctive."

A court martial differs from a civil court in this, that a prisoner may be tried at one time for several totally distinct offences: each, however, must form the subject of a separate charge. This would not apply to those cases where civil offences are tried by court martial, for the court is then acting as a civil court, and would be guided by the customs of such courts.

If violence be used to a superior officer *in the execution of his office*, it must be so stated, otherwise the crime will not come under the first but under the second paragraph of section 8, for

which death is *not* awardable, nor penal servitude, except on active service.

When *intention* enters into the offence, as it is laid down in the Act, it is best to use the very expressions adopted by it, such as "treacherously," "intentionally," "wilfully," "knowingly," &c.

A form of charge is subjoined; the heading comes first, then comes the charge itself, and lastly, the staff officer of the convening officer signs it "by order," stating by what court the offence is to be tried. *The charge proper is merely the centre part*, and this should be as nearly as possible according to the forms in Queen's Regulations, Appendix C.

The charge, therefore, as sent by the convening officer to the court, would stand thus:— Q. R., Appendix B, 2.

Charge preferred against No. 1121, *Private Joseph Hookem, of the* 110*th Regiment of Foot.*

CHARGE.

Having deserted from the 110th Regiment at Umballa on or about 10th January 1876. Q.R., Appendix C, 10.

For trial by district court martial.

By order of.....commanding.....division,

L. F., *Lieut.-Col.*,

Asst. Adjutant-General.

Umballa.....May 1876.

NOTE.—*In India it is customary to word the heading of the charge thus:—*

No. 1121, *Private J. H., of the* 110*th Regiment of Foot, placed in confinement and charged as follows:—*

CHARGE.

[*There is no harm in inserting these words, but no advantage, in the author's opinion; but do not end your heading with the word "with," as is often done.*]

CHAPTER IX.

CRIMES AND PUNISHMENTS.

A crime defined.

A crime is an action which the law has forbidden and to which it assigns a punishment.

To render it punishable, however, the commission of the action is not alone sufficient, it must be wilful and intentional—*i. e.*, it must be—

1. Done purposely.
2. Done with intent to bring about the results which ensued.

Therefore, to be a crime, there must be a specific criminal intention; this is generally called "malice."

Consequences of felonious action.

Where this intention is not expressed by the word describing the crime, such word must be qualified; *e. g.* "stealing" *does* express unlawful intent, but receiving stolen goods does *not*, as it might have been done unwittingly; therefore charge with "receiving, knowing them to have been stolen."

Where the action is felonious, a person is answerable for the consequences, even though not intended—*i. e.*, in the Clerkenwell explosion, some men placed a barrel of some explosive compound against a prison wall in the street, lit the fuze, and ran away. Several people walking in the street were killed or hurt. No doubt the criminals did not intend to hurt these individuals, but they were liable, and were tried and convicted for these results of their unlawful proceedings.

Culpable negligence.

A certain amount of culpable negligence is held to constitute "evil intent," and makes the act criminal, though in a lower degree; *e. g.*, neglect on the part of a signalman on a railway.

Wilful and intentional omission is, in the eye of the law, equal to wilful and intentional commission, and is equally criminal and punishable. Wilful omission.

I shall now proceed to remark on particular crimes, following, as nearly as possible, the order in which they occur in the Army Discipline Act.

OFFENCES IN RESPECT OF MILITARY SERVICE.

The following offences are punishable with death, or less, wherever committed. A. D. A. 4.

1. Shamefully abandoning post, &c., or inducing others to do so.
2. Shamefully casting away arms, &c., in presence of enemy.
3. Treacherous correspondence with the enemy, or sending flag of truce through treachery or cowardice.
4. Assisting or harbouring enemy.
5. Voluntarily aiding enemy when a prisoner of war.
6. On active service knowingly doing any act calculated to imperil the success of the forces.
7. Misbehaving, or inducing others to misbehave, before the enemy, in such manner as to show cowardice.

The following are punishable with penal servitude, or less, if committed on active service. A. D. A. 5.

1. Leaving ranks without orders.
2. Wilfully damaging property without orders.
3. Being taken prisoner by carelessness, or disobedience, or not rejoining when able.
4. Corresponding with, giving intelligence to, or sending flag of truce to, enemy without due authority.

5. Spreading reports calculated to produce unnecessary alarm.

6. Using words calculated to create alarm when in, or going into, action.

Note difference between "treacherous correspondence," Army Discipline Act 4 (3), *and "unauthorized correspondence," Army Discipline Act* 5 (4).

A. D. A. 6. The following are punishable—

On active service—by death or less.

Elsewhere—officer, cashiering or less; soldier, imprisonment or less.

1. Leaving commanding officer to plunder.
2. Leaving guard, picquet, patrol or post without orders.
3. Forcing safe guard.
4. Forcing or striking a sentry.
5. Impeding or refusing to assist provost marshal.
6. Doing violence to bringer of supplies, committing any offence against property or person of resident of the country.
7. Breaking into house or place for plunder.
8. *Intentionally* causing false alarms.
9. *Treachery* about the parole or watch-word.
10. Irregularly appropriating supplies.
11. Being a sentinel—
    (*a*). Sleeping or being drunk on his post.
    (*b*). Leaving post before being regularly relieved.

The following are punishable by—

In case of an officer—cashiering or less.

In case of a soldier—imprisonment or less.

1. *Negligently* causing false alarms.

2. *Improperly* making known the parole or watch-word.

Notes on above.—"Leave his guard, picquet, or post." "Post" is here used in a different signification from that which it bears in Army Discipline Act 6 (11). It here means any duty on which posted, except sentry. You must prove that it was *without leave* that he left it. A.D.A.6(2).

"Sentinel sleeping or drunk on his post, or leaving it before he be regularly relieved." The post must be accurately described in the charge, and you must prove that the man was posted. A. D. A. 6 (11).

MUTINY AND INSUBORDINATION.

Mutiny is against military authorities.

Sedition is against the civil authorities.

Mutiny is a joint act, or one tending to produce joint action, as of a number of people conspiring together. *One* man cannot mutiny.

An individual's act is called "insubordination."

For mutiny you must show an intention on the part of the offenders to rise against constituted authority and break their allegiance as soldiers.

The following are punishable by death or less:— A. D. A. 7. **Mutiny or sedition.**

1. Conspiring to cause mutiny or sedition in Her Majesty's forces or navy, or trying to persuade any person belonging to them to join in it, or joining in or not doing his best to suppress it, or knowing of it and not at once reporting it.

2. Striking or offering violence to his superior officer *being in the execution of his office.* A. D. A. 8. **Violence to superior. Insubordinate language.**

For striking or offering violence to his superior officer, or using threatening or insubordinate language to him.

On active service—penal servitude or less.

Elsewhere—officer, cashiering or less;
soldier, imprisonment or less.

"Strike or offer violence to superior officer."

Superior officer includes all non-commissioned officers.

"Offer violence,"—any threatening act or gesture amounting to an attempt to use violence; but if it were only a threat of future violence and no attempt were made, the offence would be insubordinate language only. For an offer of violence the officer must have been within striking distance. A man's aiming at you out of a barrack window with a loaded rifle *is* an offer of violence; but if he shook his fist at you out of a window on an upper storey, it would not be such. Raising his fist to strike in the orderly room would be an offer of violence.

(The Indian Articles give a wider acceptation, and make any gesture or preparation for assault equivalent to the assault.)

Also the officer must be "in the execution of his office." This has been defined to be "with his regiment or any part of it;" but if the officer were in plain clothes you must prove that the soldier knew that he *was* an officer.

The words "in the execution of his office" must be inserted in the charge, or else the minor sentence only could be awarded.

Provocation is not by law recognized as justifying an act; but, if proved, it would of course influence the court in their sentence.

Disobedience.
A. D. A. 9.

Disobedience of lawful command given by superior officer in the execution of his office, personally, *in such manner as to show wilful defiance of authority*, is punishable with death or less.

Disobedience of lawful command is punishable—

On active service—penal servitude or less.

Elsewhere—officer, cashiering or less;
soldier, imprisonment or less.

Neglecting to obey garrison or other orders is punishable— A. D. A. 11.

officer, cashiering or less;

soldier, imprisonment or less.

Meaning of words "lawful command."

"*Lawful Command.*"—This is inserted to prevent the inferior being ordered to do an act which would render him liable to civil punishment; *e.g.*, an officer engaged in a broil calling on soldiers to take his side. The meaning is, that a man is not bound to commit an unlawful act because his military superior tells him to do so; it is not intended to enable an inferior to argue whether a commanding officer had a right to give an order or not. This mistake was made by the marines at Chatham, who persisted in preaching in the streets after their commanding officer had ordered them not to do so.

Observe that the insubordinate language must be used *to* not *of* the superior officer; insubordinate language *of* him, in his absence, could only be tried under section 40.

The insubordination, whether of act or of word, must be precisely set forth in the charge. For forms of charges for these crimes, see Queen's Regulations. Q. R., Appendix C, 1 to 9.

Disloyal words regarding sovereign. A. D. A. 35.

Using traitorous or disloyal words regarding the Sovereign is triable under section 35, and is punishable—

officer, cashiering or less;

soldier, imprisonment or less.

If the disobedience were an isolated act it would be treated as insubordination.

If previously agreed upon by a number, as mutiny.

A D. A. 10. The following are punishable—

officer, cashiering or less;

soldier, imprisonment or less.

1. Being concerned in a fray and refusing to obey any officer (though of inferior rank) who orders him into arrest, or striking, or using, or offering violence to any such officer.
2. Striking, or using, or offering violence to any person, whether subject to military law or not, in whose custody he is placed, and who is not his superior officer.
3. Resisting an escort whose duty it is to apprehend him, or have him in charge.
4. Being a soldier, and breaking out of barracks, camp or quarters.

DESERTION. FRAUDULENT ENLISTMENT. ABSENCE WITHOUT LEAVE.

Desertion defined.

Definition.—Desertion is absence without leave, without the intention of returning.

The length of the time of absence has nothing to do with it. A man may be absent for several years, and yet not be a deserter; or he may have only got a few yards from the barrack gate, and yet be one. However clear his intention to desert he cannot be convicted of the crime of desertion unless you prove absence without leave.

A. D. A. 12. A soldier may be tried for deserting from a regiment into which he illegally enlisted, so that any number of charges for desertion may be made the subject of a single arraignment.

If he enlisted in another regiment without being discharged from the first regiment he should not be charged with desertion, but with fraudulent enlistment; proof should be given that he received a free kit on such fraudulent enlistment, and the court should sentence him to deduction of pay to make its value good, but a separate charge should not be preferred. G. O. 108.

Deserting, attempting to desert, or persuading or attempting to persuade to desert, punishable— A. D. A. 12.

On active service or under orders for it—

death or less.

Under other circumstances—

first offence, imprisonment or less;

second offence, penal servitude or less.

The severer punishment can only be awarded for a second offence where the offender has been previously convicted for the first offence; but if a man is tried by the same court successively for the two offences and convicted of both, the severer punishment may be awarded upon his conviction for the second offence; and if both convictions are confirmed, will be valid.

A prisoner charged with desertion may be found guilty of attempting to desert, or of absence without leave. A. D. A. 55.

A prisoner charged with attempting to desert may be found guilty of desertion, or absence without leave.

On having been convicted of desertion or fraudulent enlistment, or having confessed it and his trial been dispensed with, a soldier forfeits the whole of his former service, and is liable to serve for the term of his original enlistment, reckoned from the date of his conviction, or of the order dispensing with trial. A court martial A. D. A. 76.

may recommend that all or any part of this should be restored.

Fraudulent enlistment.
A. D. A. 13. A man who belongs to the regular forces, the reserve, or the militia, who, without having been first regularly discharged, enlists in the regular forces; or—

Who, belonging to the regulars, improperly enlists or enrols himself in the militia, reserve forces or the royal navy, is deemed to be guilty of fraudulent enlistment.

Punishment—

for first offence, imprisonment or less;

for subsequent offence, penal servitude or less.

Any number of fraudulent enlistments may be the subject of a single arraignment.

Note above as to forfeiture of service.

Observe, that a man belonging to one regiment enlisting in another, now constitutes "fraudulent enlistment," not desertion, as was formerly the case.

A. D. A. 14. Assisting to desert, or conniving at desertion.

Punishment—imprisonment or less.

A. D. A. 15. Absence without leave.

Failing to appear at parade, or leaving it without permission.

Going beyond fixed limits of camp or garrison without pass (soldiers only).

Absence from school without leave (soldiers only).

Punishment—officer, cashiering or less;
soldier, imprisonment or less.

A. D. A. 46. For absence without leave, a commanding officer can give imprisonment not exceeding

twenty-one days, but limited, as if exceeding seven days, not to exceed the term of absence. If absence was over seven days, the accused may demand evidence to be taken on oath.

If commanding officer award over seven days' imprisonment, he cannot also order a minor punishment for the absence.

Court on illegal absence. A. D. A. 70.

When a soldier has been absent without leave for twenty-one days, a court of inquiry may be assembled, which takes evidence on oath respecting the absence and deficiency of kit; the declaration is to be recorded in the regimental books. If the man does not afterwards surrender or be apprehended, this *record* has the legal effect of a conviction for desertion. If he does surrender, or be apprehended, this record, or a copy of it duly certified, is admissible, on his trial, to prove such absence, or deficiency of kit.

Confession of desertion or fraudulent enlistment. A. D. A. 71.

If a soldier sign a confession that he has been guilty of desertion or of fraudulent enlistment, his trial may be dispensed with by competent authority, and he may be ordered to suffer the same forfeitures and deductions from pay as he would have incurred had he been tried, or any part of them.

If evidence of the truth or falsity of such confession be not forthcoming, the commanding officer records the confession in the regimental books and signs it, and the soldier continues to do duty till proof can be obtained.

Who can dispense with trial.

The competent authority to dispense with trial is—

The commander-in-chief or adjutant-general.

The commander-in-chief of forces or presidency in India.

The commander-in-chief of forces in a colony.

A. D. A. 96. A soldier convicted of, or who has confessed fraudulent enlistment, may be compelled to serve either in accordance with the terms of his attestation on such fraudulent enlistment, or of any prior attestation.

If a soldier's confession of desertion, &c., turns out to be false, he can be tried under section 27.

Civilian falsely confessing desertion.
A.D.A. 145. If any person falsely confesses himself to be a deserter he shall, on summary conviction, be sentenced to imprisonment with or without hard labour for not more than three months.

Civilian abetting desertion.
A.D.A. 146. Inducing soldier to desert, or aiding him to desert, or concealing or rescuing a deserter, &c.

Person guilty of the above, liable to six months' imprisonment with or without hard labour on summary conviction. When a person confesses himself to be a deserter to a civil court of summary jurisdiction, the court remands him, and transmits a descriptive return—

A.D.A. 147. At home—
to the secretary of state;
In India—
to the officer commanding the district;
In a colony—
to the officer commanding the forces;
for information as to the truth or falsity of such statement, and may remand him for eight days at a time for any reasonable time till such information arrives.

Apprehension of deserters.
A.D.A. 147. If a person be suspected, on reasonable grounds, of being a deserter, he may be apprehended by a constable; or, if no constable be immediately to be met with, by any person, and forthwith brought before a court of summary jurisdiction. If the court be satisfied that he is a deserter, it may either hand him over to mili-

tary custody, or commit him to prison till he can be handed over. In either case it sends a descriptive return—

At home—
to the secretary of state.

Elsewhere—
to the general or other military officer commanding.

A soldier committed as a deserter by a court of summary jurisdiction may be transferred to any corps of regulars, and made to serve in it without prejudice to his subsequent trial and punishment. A. D. A. 80 (8).

DISGRACEFUL CONDUCT.

An officer who behaves in a scandalous manner unbecoming the character of an officer and a gentleman *must*, on conviction, be cashiered. A. D. A. 16. **Scandalous conduct of an officer.**

Scandalous Conduct.—The insertion of the word "scandalous" renders cashiering obligatory; therefore do not insert it in the generality of cases, as a charge worded under section 40 will meet most cases and does not fetter the court. The term "scandalous" should only be used for heinous offences. For other non-specified offences charge with "conduct unbecoming an officer, and to the prejudice of good order and military discipline."

Any person subject to military law, who is charged with public or regimental money or goods, and who is convicted of stealing, fraudulently misapplying, or embezzling the same, or who connives at so doing, or who wilfully damages any such goods, is liable to penal servitude or less punishment. **Stealing or embezzlement, or wilful damage.** A. D. A. 17.

This is the only case of disgraceful conduct for which penal servitude can be awarded. The

court must take evidence of the loss sustained, and refund of this amount may be awarded.

This section is intended for pay-masters, store-keepers, and persons in special positions of trust, not for small things, such as a soldier destroying ammunition, &c.

Charge either with "embezzlement," or "*fraudulently* misapplying;" in the latter case, the word "fraudulently" is necessary.

Embezzlement defined. Embezzlement is the fraudulent application to one's own use of that which is entrusted to one's care for another.

Fraudulently misapplying is misappropriating money or property entrusted to a person for custody or use for some particular purpose, and which that person diverts from that purpose to his or her own purposes.

A pay-sergeant making away with company money comes under the latter head. He is liable for embezzlement like any other person, if he make away with any *other* sum, such as, say, money received for a cheque given to him to cash.

A. D. A. 18. The following are punishable by imprisonment or less:—

Malingering &c. Malingering, feigning, or producing disease.

Maiming, or injuring himself or other soldier, or causing himself to be maimed with intent to render himself or other soldier unfit for service.

Aggravating disease; delaying cure.

Stealing or embezzling. Stealing or embezzling money or goods, the property of a comrade, an officer, or any regimental institution, or any public money or goods.

Fraudulent or indecent offences. Any offence of a fraudulent, cruel, indecent, or unnatural nature.

Malingering.—The acts done or omitted to be done, whence the court are to draw the inference that he "malingered," should be specified.

Maiming, &c.—A court of inquiry is always held on a man becoming injured in any way.

Theft.—If by a soldier from a military person, is would generally be tried by a court martial; if from a civilian, by a civil court.

For larceny (theft) there must be—

(*a*). Felonious taking.
(*b*). Felonious carrying away.
(*c*). It must be proved that the goods were actually or constructively the property of the person set forth in the charge.

By court martial you can only award a sentence of two years' imprisonment with hard labour, stoppages, and discharge with ignominy.

By civil law he can be sentenced as follows:—

For *simple* larceny, to imprisonment for two years, or to three years' penal servitude.

For *compound* larceny, to fourteen years' penal servitude. *Compound larceny is larceny accompanied with violence, such as garotting, burglary, &c.*

Therefore, all cases of compound larceny should be sent before a civil court so as to get the greater punishment.

Observe, however, that a court martial can put a soldier under stoppages till the money be returned. A civil court cannot do this.

In case of a man found in possession of stolen goods shortly after the theft, try on two alternative charges, unless you have distinct proof as to whether he "stole" or "received the artielcs knowing them to be stolen." Q. R., Appendix D, 29.

Observe the difference between stealing and fraudulently misapplying; *e. g.*, a man pawning a watch which had been entrusted to him.

CHARGE.

Having at Umballa, on or about the 29th April 1880, pawned a watch entrusted to him by Major Gorham, R.A., and thereby fraudulently obtained the sum of five pounds.

NOTE 1.—*By using the word "fraudulently" the offence is brought under Army Discipline Act* 18 (5).

NOTE 2.—*The words "Disgraceful Conduct" are not to be used unless the crime is under Section* 18 (5) *A. D. A. latter part, as "disgraceful conduct of a cruel, indecent, or unnatural kind."*

Canteen Money, &c.—Generally tried for fraudulently misapplying. If you are not able to prove that it was fraudulently done, but perhaps occasioned by the man's neglect, charge under section 40, *viz.*—

CHARGE.

A. D. A. 40. Conduct to the prejudice of good order and military discipline, in having at Umballa, between the 1st and 31st May 1880, when employed as canteen sergeant, at the regimental canteen, 142nd regiment, so negligently discharged his duty as to cause a loss to the canteen fund of rupees one hundred and sixty-five, or thereabouts.

Blackstone. A. D. A. 41. *Offence of a felonious nature.*—Query? What offences are felonious? Felony is properly an offence which occasions a total forfeiture of lands, or goods, or both, at the common law. Among these are murder, manslaughter, theft, burglary, house-breaking, rape, arson, and forgery. These should be charged under section 41.

DRUNKENNESS.

Punishment on conviction— A. D. A. 19.
officer, cashiering or less;
soldier, imprisonment or less;
and in addition to, or in lieu of, other punishment, a fine not exceeding one pound.

Soldier drunk must be dealt with summarily by commanding officer unless he was on duty, or warned for duty, or had been drunk on at least four occasions previously in the last twelve months, or unless he appealed against the award of his commanding officer. A. D. A. 46.

This does not concern the Court, but a commanding officer is not to send it for trial unless it be the case. A soldier drunk on sentry should be tried under A. D. A. 6. [See page 82.] Letter A. G. Horse Gds. 110-114, 25th March, 1880.

The obligation to deal summarily with the offence does not apply to the case of non-commissioned officers. A.D.A.175.

OFFENCES IN RELATION TO PRISONERS.

Improperly releasing prisoners. A. D. A. 20.
Allowing prisoner to escape.
If done wilfully, punishable by—
penal servitude or less.
If done negligently—
imprisonment or less.

In framing the charge be careful to use the word "wilfully" or "negligently," as the case may be.

Unnecessarily detaining prisoner in arrest or confinement. A. D. A. 21.

When in command of guard, not giving in crime against a prisoner within twenty-four hours, or as soon as relieved—
officer, cashiering or less;
soldier, imprisonment or less.

The usual time within which a prisoner should A. D. A. 45.

be brought to trial is eight days; a longer delay must be specially reported and explained.

A. D. A. 22. Breaking arrest or escaping from confinement—

officer, cashiering or less;
soldier, imprisonment or less.

OFFENCES IN RELATION TO PROPERTY.

A. D. A. 23. Taking fees from sutlers, &c.—
imprisonment or less.

A. D. A. 24. Making away with necessaries, decorations, arms, clothing, &c., or ill-treating or selling any horse of which the soldier has charge—
imprisonment or less.

Q. R., Appendix C, 33. The soldier may be tried on two alternative charges; *first* charge, making away with the articles; *second* charge, losing by neglect the articles. If found guilty of one of the charges, he must, of course, be acquitted of the other. The articles deficient must be enumerated at length in each charge, but their value need not be stated if it be laid down by regulation. It must be stated in the charge that the articles were part of his accoutrements, necessaries, clothing, or equipment, as the case may be.

Medals.—A soldier cannot be punished for losing a medal, but he can for making away with or selling one. The value must be stated.

Q. R. XXI. 13. For board to be held, when one becomes deficient, see Q. R. XXI, 13 to 18.

If the board report that the medal was made away with *designedly*, the soldier is to be tried by court martial. If convicted he may, after five years clear of the defaulter book, be recommended to commander-in-chief for a new one, for which he would have to pay.

Q. R. XXI. 14. If he lost it from neglect, he may be recommended for another at his own expense, after be-

ing two years clear of the defaulter book; and if he lost it accidentally, he may be recommended for another at once. The public will only give him another if he lost it accidentally *on duty*. The board are always to take evidence of character. A soldier cannot be tried for making away with a medal, if he has been discharged since he obtained the medal, and has again enlisted; for, when he took his discharge, the medal became his private property. *Attempting to sell, or offering for sale*, cannot be tried under this section, but may be tried under section 40. Q. R. XXI. 15.

OFFENCES RELATING TO FALSE DOCUMENTS AND STATEMENTS.

Signing false reports, &c. A. D. A. 25.

Knowingly making false or fraudulent statements or omissions, or being privy to their being made.

Suppressing documents with intent to defraud or injure.

Making a false declaration—
imprisonment or less.

Neglecting to make a report which it was his duty to make, or signing it in blank— A. D. A. 26.
officer, cashiering or less;
soldier, imprisonment or less.

With regard to false returns, observe that you must prove that the return was false, that the prisoner knew it to be false, and that the person calling for the return was authorized to demand it.

Making false accusations against other officers or soldiers; or, when making a complaint, making a false statement affecting the character of an officer or soldier, or suppressing material facts. False accusations. A. D. A. 27.

Making a false statement in respect of prolongation of furlough—

imprisonment or less.

For false statements about desertion, &c., see before under "desertion."

A. D. A. 88. *For contempts of court, &c., see before, chapter V.*

Perjury or false declaration.

A. D. A. 29. For wilfully giving false evidence when examined on oath or solemn declaration before a court martial, or any court or officer authorized by the Army Discipline Act to administer an oath—

imprisonment or less.

BILLETING, IMPRESSMENT CARRIAGES, &C.

A. D. A. 30, 31. For offences in relation to billets, or as to impressment of carriages—

officer, cashiering or less;

soldier, imprisonment or less.

OFFENCES IN RELATION TO ENLISTMENT.

A. D. A. 32. Soldier or sailor discharged with ignominy, reenlisting without declaring the circumstances of his discharge—

penal servitude or less.

This section does not apply to soldiers who are discharged merely because they have been convicted of felony by a civil court, or in other ways involving discredit, but only to those who have been discharged "with ignominy" by sentence of court martial, or summarily as "incorrigible and worthless" by order of the commander-in-chief or other proper authority, or "dismissed with disgrace" from the navy.

A. D. A. 33 Making false statement on attestation.

A. D. A. 34. Enlisting a man whom he knows to belong to the regulars, reserve, militia or navy, or to have

been discharged with ignominy, or wilfully breaking enlistment laws—

imprisonment or less.

Using traitorous or disloyal words regarding the Sovereign. A. D. A. 35.

Disclosing information about forces or stores in such manner as to produce effects injurious to Her Majesty's service— A. D. A. 36.

officer, cashiering or less;

soldier, imprisonment or less;

This would meet all such cases as writing improperly to newspapers, &c.

This does not apply to *traitorous* disclosures, which would come under section 4 or 6.

Note, that this applies to all persons subject to military law, whether serving with the forces or not.

Officer or non-commissioned officer striking or ill-treating a soldier, or, having received pay due to an officer or soldier, refusing to give it to him, or detaining it *unlawfully*. A. D. A. 37.

Fighting, being concerned in or conniving at fighting a duel. A. D. A. 38.

Attempting to commit suicide.

Refusing to deliver to civil power soldier or officer accused of civil offences. A. D. A. 39.

It must be proved that the demand for his delivery was *legally* made; *e.g.*, if the civil magistrate has no jurisdiction to try him except on the request of the civil authorities, the commanding officer is not liable to be prosecuted under either this section or section 155 for refusing to deliver the man thus illegally demanded.

Committing any act to the prejudice of good order and military discipline, not specially pro- A. D. A. 40

vided for in any other section of the Army Discipline Act—

officer, cashiering or less;

soldier, imprisonment or less.

An offence to be tried under this last, the 40th section, must be—

1*st*.—One which *is* to the prejudice of good order and military discipline.

2*nd*.—One which has no section of the Army Discipline Act specially framed to deal with it.

It is this last point which more specially calls for your attention, as it is very common to see charges submitted for such crimes as—

Making away with kit. Section 24.

Falsely confessing desertion to commanding officer. Section 27.

Making false entry in small book. Section 25.

Making disturbance in billets. Section 30.

All charged under the heading of "conduct to the prejudice, &c." It is *wrong* so to charge them, and doing so shows that a man is ignorant of the fact that there is a particular section to meet the case.

OFFENCES PUNISHABLE BY ORDINARY LAW.

Second trial. A. D. A. 155. A person who has been tried by court martial *may* be afterwards tried by a civil court for the same offence, but such court shall, in awarding punishment, have regard to the military punishment which the prisoner may already have undergone for the offence.

If a person has been acquitted or convicted of an offence by a civil court he cannot be again tried by any court, civil or military, for that offence.

It will be observed that this is confined to trial, and does not extend to punishments, such as reduction or dismissal which can be inflicted without trial.

Refusing to assist civil power.

An officer neglecting or refusing to deliver up to the civil power any officer or soldier accused of an offence, or who wilfully obstructs or refuses to assist constables in apprehending such officer or soldier, may be found guilty of a misdemeanour in a superior civil court.

He might be punished by a military court under section 39.

If such offence be committed out of the United Kingdom, it is deemed to be within the jurisdiction of the High Court of Justice in England.

Trial of civil offences by court martial.
A. D. A. 41

A court martial cannot try treason, murder, manslaughter, treason-felony, or rape committed in the United Kingdom, or anywhere in Her Majesty's dominions (except Gibraltar) except on active service or at places more than one hundred miles from a city or town where the offender can be tried by a competent civil court.

When tried by court martial the following punishments can be awarded on conviction, *viz.*, for—

Treason, death or less.

Murder, death.

Manslaughter,
Treason-Felony,
Rape,
} Penal servitude or less.

In England or elsewhere any other offence not specified in the Army Discipline Act as a military crime, and which is punishable by the law of England, may be tried by court martial, and either such punishment given as could be given for an act to the prejudice of good order and military discipline (section 40), or such punishment

as the law of England awards for the offence. (For these, see some good work on English civil criminal law, such as Archibald.) It is to be notified that civil offences can be tried by *any* court martial competent to try the offender. A court so trying an offence cannot give a greater punishment than lies within its ordinary powers; *e.g.*, a regimental court martial cannot give death, penal servitude, imprisonment in excess of forty-two days, or discharge with ignominy.

A. D. A. 47.

A. D. A. 54 (9).

Sentence of death or penal servitude passed in India by court martial for a civil offence must be approved by the governor-general or governor of a presidency; or if in a colony, by the governor of the colony.

CHAPTER X.

VARIOUS REGULATIONS, PENALTIES, &c.

Redress of Wrongs.—An officer should first apply for redress to his commanding officer; if he does not get satisfaction, he may complain to the commander-in-chief, who enquires and reports to Her Majesty through a secretary of state. A soldier should complain to his captain; if he does not get redress, then to the commanding officer; and, if he does not get redress, then to the general or officer commanding the station. A. D. A. 42, 43.

If false statements affecting the character of any officer or soldier be inserted in such complaints, or if material facts be wilfully suppressed, the complainant can be punished under section 27. There is no punishment for making a frivolous complaint. A. D. A. 27.

Provost Marshal.—A provost marshal and his assistants may be appointed abroad by the general officer commanding a body of forces. He can arrest persons subject to military law committing offences, and carry into execution sentences of courts martial, but cannot inflict punishments of his own authority. *On active service* he may bring any such offenders before an officer commanding a detachment, &c., and the offender may be tried by court martial, and where no ordinary court can be assembled, he may be tried by field general court martial. A. D. A. 72.

An officer's pay can be stopped for any time absent without leave, unless a satisfactory explanation be given through his commanding Deductions, officer's pay. A. D. A. 133.

officer, and approved by the secretary of state. He may also be made to pay for any loss or damage the sum awarded by a court martial, and for any pay of an officer or soldier he may have illegally retained.

Exemptions, soldiers. A. D. A. 138.

A soldier cannot be *taken out of the service* or *compelled to appear* before a court of law except for a crime punishable with fine, imprisonment, or some greater punishment, or for a debt of over thirty pounds. He cannot be so made to appear for breaking a contract, absenting himself from his service, &c.

Small debts.

He *can*, however, *be sued* after due notice given him, and after judgment execution may be had against any private property of his, but his person, pay, arms, equipment, &c., cannot be touched.

Liability for wife or children. A. D. A. 139.

He cannot be punished for deserting his wife or family; but a civil court may order a sum for their maintenance, or for that of a bastard child; but, as above, his person, pay, &c., cannot be touched.

The secretary of state may, if he think fit, order a sum not exceeding six pence a day from a non-commissioned officer's pay if he be not under the rank of sergeant, and three pence a day from any other soldier's pay, to be deducted for their support.

A summons on a soldier for such a matter is left on his commanding officer, and sufficient money must be deposited for the soldier to attend the hearing of the case, and return from doing so. The summons is ineffectual if he be under orders for embarkation to serve abroad.

Limitation of time of trial. A. D. A. 154

A person cannot be tried by court martial for an offence committed more than three years

before the date on which his trial begins, except for—

(*a*). Mutiny.
(*b*). Desertion.
(*c*). Fraudulent enlistment.

Desertion, except on active service or fraudulent enlistment, cannot be tried when the soldier has served for three years in an exemplary manner subsequent to the offence; but, if his offence was fraudulent enlistment, he forfeits all service previous to it, and his last enlistment alone holds good.

Summary reduction, N. C. O. A. D. A. 175 (2).

A non-commissioned officer may be summarily reduced to a lower grade or to the ranks by order of—

(*a*). The commander-in-chief.

(*b*). The commander-in-chief of India or an Indian presidency.

Punishment. Reserve man. A. D.A. 177.

If a reserve man absent himself twice consecutively from the place where he is ordered to present himself for pay, or is insubordinate to the person appointed to pay him, or fail to comply with reserve force regulations, he is liable, on summary conviction, to imprisonment with hard labour for not over three months, or he may be tried by general or district court martial.

Corporal punishment.

Corporal punishment—

—is only awardable on active service and for offences punishable with death, for which see appendix A. A. D. A. 44 (6).

Warrant officers are not liable to it. A.D.A. 174 (2).

Female camp-followers are not liable to it. A. D. A. 44 (9).

It cannot be awarded to a non-commisioned officer or to a reduced non-commissioned officer A. D. A. 44 (5).

for offences committed whilst a non-commissioned officer;

A. D. A. 44 (5). It cannot exceed twenty-five lashes;

A. D. A. 44 (6). It may be commuted to imprisonment with or without hard labour not over forty-two days.

A.D.A. 129. *In prison*, corporal punishment may be given, not exceeding twenty-five lashes, according to the Prison Acts.

Recruit making false answers.
A. D. A. 95. A recruit making knowingly false answers at attestation may be summarily imprisoned for three months; or if he has been attested, he may be so punished or tried by court martial under section 33.

Extension of furlough.
A.D.A. 166. A soldier, who from sickness or other casualty, has had his furlough extended by an officer not under the rank of captain, or by a justice of the peace as provided in the Army Discipline Act, section 166, is not liable to be treated as absen without leave.

Courts of request.
A.D.A. 141–144. *Courts of request* may be held in India in any place out of the jurisdiction of a small cause court; they may be assembled by the commanding officer of the camp, garrison, or cantonment; they can take cognizance of debts not over Rs. 400 owed by officers or sutlers; non-commissioned officers and soldiers are not liable to these courts, nor can a soldier prosecute an officer before them, nor one officer prosecute another officer. They must consist of five or three commissioned officers. The president must be a field officer, if practicable, and never under the rank of captain, and every member must have five years' service as a commissioned officer. They are sworn, and take evidence on oath. They can award execution against any private property (not military equipment), and can order half the officer's pay and allowances to

be stopped till the debt is paid. In case of a sutler or person drawing no pay, he may be imprisoned within the military boundaries for any period not exceeding two months, if the debt be not sooner paid.

Pay can only be ordered to be stopped as above whilst the debtor is in India.

Discharge.

Every soldier of the regular forces discharged, for whatever reason, must be given a certificate stating his service, conduct, character, and cause of discharge. A. D. A. 88.

He can only be discharged by—

(*a*). Authority from Her Majesty direct.

(*b*). Sentence of discharge with ignominy of a court martial.

(*c*). Order of the competent military authority, which is defined in section 98.

A recruit can claim discharge within three months of his attestation on payment of ten pounds, except when the reserve soldiers are called out, when he may be retained till they are no longer required. A. D. A. 78.

He may be discharged at the completion of the term of his original enlistment or re-engagement. A. D. A. 86.

By order of a court of summary jurisdiction when claimed as an apprentice or indentured labourer in a colony— A. D. A. 92 (*2*)

Transfers.

1. A soldier enlisted for general service may, within three months of his attestation, be transferred to any corps of the same branch of the regular service. A. D. A. 80.

2. With his own consent he may at any time be transferred to any corp of regulars.

3. He may be transferred to any corps of the same branch of the service—

(*a*). When invalided from service beyond seas.

(*b*). When his corps is ordered abroad, and he is medically unfit to go, or is within two years of the completion of his service.

(*c*). When he is serving abroad, and his corps is ordered home or to another station, and he has more than two years of his original enlistment unexpired.

NOTE.—*This does not apply to men who have re-engaged, or who have extended their army service for the residue unexpired of their term of twelve years.*

4. When a soldier has been transferred to serve as a warrant officer, or armourer sergeant, or to army hospital corps, or army service corps, or to staff or mounted military police, &c., he may be removed and transferred to any corps of regulars at home, or in the station where he is serving, and made to serve either in his original or a lower rank.

5. A soldier who has been guilty of desertion or fraudulent enlistment, and has either been convicted or has confessed, and his trial been dispensed with,—

—or who has been sentenced by a court martial to imprisonment for six months or more,—

—is liable, in commutation, wholly or partly of other punishment, to general service, and may be from time to time transferred as ordered.

6. A soldier committed as a deserter by a court of summary jurisdiction may be transferred to any corps of regulars without prejudice to his subsequent trial.

In time of war, or when soldier is on service beyond seas, or when reserve is called out, a soldier may be detained and his service prolonged for a period not exceeding twelve months. A. D. A. 83. **Prolongation of service.**

A soldier may remain in the service, with permission, after twenty-one years' service, but can at any time claim his discharge on three months' notice. A. D. A. 82.

When an officer is convicted of an offence against the Army Discipline Act by a civil court, a certificate of such conviction and the judgment of the court must be sent to the secretary of state. **Officer convicted by civil court.** A. D. A. 155 (4). A. D. A. 108.

An officer whilst subject to military law may not act as a justice of the peace to attest soldiers, except militia officers whilst disembodied. **Disabilities of officers.** A. D. A. (90).

An officer of regulars on full pay cannot be sheriff of a county, &c., mayor or alderman, or office-holder of any municipal corporation in the United Kingdom. A. D. A. 140.

This does not apply to the auxiliary forces when assembled for annual training. A. D. A. 173 (4).

PENALTIES.

Penalty for unlawful recruiting. Fine not exceeding £20. A. D. A. 94.

Officer improperly demanding billets is guilty of a misdemeanour. A. D. A. 108.

Officer or soldier committing an offence about billets, punishable under Part I. of the Act, but for which no remedy is given by Part II., may be fined £50.

Officer or soldier committing a similar offence about impressment of carriages. Fine not exceeding £50—not under £2. A. D. A. 115.

A.D.A.116. Officer or soldier not paying for billets or carriages, &c., or—

—keeper of victualling house or owner of carriage, animal, &c., having suffered ill-treatment, and having first (if possible) complained to the commanding officer—

—court of summary jurisdiction may certify the same to secretary of state, who will order the same to be paid, or, if he think the claim excessive, may order the complaint to go before a county court of summary jurisdiction.

A.D.A.118. Any person making a fraudulent claim to be provided with carriages, animals, billets, &c., is liable, on summary conviction, to imprisonment, with or without hard labour, for not over three months, or to a fine not less than £1 and not over £5.

A.D.A.148. Trafficking in commissions, promotions, or exchanges. Fine £100, or imprisonment not exceeding six months, and, if an officer, to be dismissed the service.

A.D.A.149. Buying, taking in pawn, &c., a soldier's necessaries, or soliciting him to sell or pawn them, or assisting him to do so—on summary conviction—

1*st offence.*—Fine not over £20, and treble the value of the property.

2*nd offence.*—Fine not over £20, and treble the value of the property, but not less than £5, *or* imprisonment, with or without hard labour, not exceeding six months.

If such property be found in a person's possession, and he cannot satisfactorily account for it, he may be fined £5 or less.

Court of summary jurisdiction. A court of summary jurisdiction can try any offence triable in a civil court, except misdemeanours or offences punishable on indictment.

The court consists of a justice of the peace, or police magistrate, &c. A.D.A. 181.

A *misdemeanour* means, in India, an offence punishable by fine or imprisonment.

An *indictable offence* means one punishable by rigorous imprisonment. A. D. A. 172 (7).

A month means a calendar month. **Month.**

A year means twelve calendar months, and may be held to commence on any day in any month. **Year.**

On active service means whenever a person, subject to military law, is attached to, or forms part of, a force which is engaged in operations against the enemy, or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of a foreign country. **Active service.** A.D.A. 181.

Enemy includes armed mutineers, armed rebels, armed rioters, and pirates. **Enemy.**

COURTS OF INQUIRY.

Her Majesty is empowered to make rules, &c., for the assembly and procedure of courts of inquiry. A. D. A. 69 (1).

A court of inquiry may be held when a soldier has been absent without leave for twenty-one days. It takes evidence *on oath* regarding such absence, and deficiency of equipment, kit, &c., and the court makes a declaration accordingly; this declaration is to be recorded by the commanding officer in the regimental books. A. D. A. 70. **Court on illegal absence.**

If the soldier does not afterwards surrender or be apprehended, *this record* has the legal effect of a conviction of desertion.

If he is apprehended or surrender this record can be produced as evidence of his absence and deficiency of kit, &c. [See "evidence—documents admissible."]

Other courts of inquiry. Rules: Procedure 48–58.

Other courts of inquiry may be assembled by an officer in command of any body of troops, and will enquire into any thing which they are ordered to do. Written instructions should be furnished to them. They may consist of any number of officers of any rank and corps. They cannot compel civilian witnesses to attend, and cannot take evidence on oath.

If held on any matter affecting the character of an officer or soldier, such individual must have full opportunity of being present during the inquiry, and of making any statement he may wish to make, and of cross-examining witnesses, and may produce witnesses in defence of his character.

The court is, *in such a case*, to give no opinion.

The proceedings cannot be given in evidence against an officer or soldier at his subsequent trial.

If he be tried for a matter which has been reported on by a court of inquiry, he is entitled to a copy of the proceedings of the court of inquiry.

If the officer to whom the proceedings are sent form an opinion adverse to the officer or soldier whose conduct was inquired into, such opinion is to be communicated to such officer or soldier.

Officers who have been members of the court of inquiry are not to be detailed as members of a subsequent court martial on the same matter.

CHAPTER XI.

EVIDENCE.

WITH regard to evidence, courts martial conform, generally, to the rules observed in the practice of civil courts, and it has been definitely laid down that it is only the English rules which are to guide the proceedings of courts martial held under the Army Discipline Act. A.D.A. 124, 125.

It is important to have a clear idea of what evidence is admissible and what is *not* so, as, if inadmissible evidence be not rejected, not only may injustice be done, but the proceedings may be immensely protracted.

Definition of evidence

Evidence is all legal means, exclusive of argument or deduction, which tend to prove or disprove any matter which has been submitted for the determination of the court.

The principal means are—

1. "Parole" or "oral" testimony of witnesses examined *vivâ voce* in court as to facts within their own knowledge.
2. Written or documentary evidence produced in court.
3. There are certain matters which courts are bound to notice judicially—*i.e.*, *without proof*. Such are—

   Acts of Parliament.

   Queen's regulations.

   Royal warrants and regulations.

Every body is supposed to know them, and the court may refer to them to refresh their

memories without their being produced, and sworn to, as all other books, papers, &c., must be when adduced as evidence.

A.D.A.53. The members may also inspect for themselves any things or places properly identified by evidence, and considered material to their decision.

Proof. *Proof* is not the same as but the consequence of evidence.

Matter when proved. A matter is considered to be legally proved when it is established *by competent and satisfactory evidence.*

Competent evidence is such as is admissible by law.

Satisfactory evidence is such as will satisfy a reasonable and unprejudiced mind.

There are five maxims or general rules of evidence which must be thoroughly learned and understood.

RULES OF EVIDENCE.

Rules of evidence. 1. The evidence must be confined to the points at issue.

2. The burden of proof lies with the party making the assertion.

3. The substance only of the issue or charge need be proved.

4. Hearsay is not evidence.

5. The best evidence must be produced which the nature of the case admits of.

Rule 1. *Rule* 1.—*The evidence must be confined to the points at issue.*

What are *points at issue*?

Points at issue. Points at issue are facts alleged by the prosecutor in his arraignment, and denied by the prisoner in his plea of "not guilty."

All evidence which does not go to prove one or other of these issues, should be rejected. Evidence, however, which is, at first, apparently irrelevant, may really bear on the issue importantly; therefore, the court must exercise a careful discretion, but may refuse evidence unless it can be shown in what way it will be useful.

Evidence indirectly bearing on the points at issue.

Sometimes circumstances which have not an immediate and direct bearing on the very point at issue, may afford an indirect and consequential inference to prove or disprove the disputed fact, and such evidence should not be disallowed. A question which would be irrelevant in the examination-in-chief may be quite allowable in cross-examination; and though, as a rule, enquiry into facts, other than those which are charged, would not be allowed, yet, in the absence of direct proof, if it can be shown that they bear *indirectly* on the point at issue, such evidence may be taken; *e.g.*, in a charge for stealing, though it is not material, in general, to enquire into the taking of other goods not mentioned in the charge, yet if goods stolen the same night from the same or adjacent premises were found in the prisoner's possession, it would be strong presumptive evidence that he had been in or near the owner's house at the time, and in that point of view it would be material.

In desertion cases it is frequently necessary to enquire into collateral matter, such as selling of uniform, purchase of plain clothes, &c., in order to prove that the accused had no intention of returning, such *intention* being one of the points at issue.

Evidence of character.

No evidence of *bad* character can be given against a prisoner as an argument for his guilt; *e.g.*, on a trial for murder, evidence as to attempts to murder other men would be excluded, but

threats against or previous attempts to assassinate the deceased *would* be admissible as evidence of intention, as would also any evidence showing the existence of a motive likely to instigate him to commit the murder in question.

Although evidence of bad character cannot be brought forward before the finding, yet evidence of good character may be brought forward in the defence.

Character unconnected with the charge must not be allowed to weigh as evidence: *e.g.*, evidence of gallant conduct in the field on a charge of theft, or evidence of honesty on a charge of misbehaving before the enemy; such evidence must be taken, but must not be weighed. Where there is point blank contradiction of evidence as to facts, and the prosecution is weak, evidence of character becomes most important, especially where there is only one evidence on each side, such as charges of assaulting women in railway carriages, &c.

Acts or words of co-conspirators.

In charges of conspiracy, acts or words of any one of the party, if in pursuance of the original concerted plan, are considered as the acts or words of the whole party, and evidence regarding them is admissible against the others. Evidence as to the history and nature of the conspiracy, even before the prisoner had anything to do with it, is admissible. Evidence as to the prisoner's conduct *after the crime* may be received if it be such as would tend to show whether he had committed the crime or not.

Writings and words being part of the *res gestae* are evidence against co-conspirators, but statements and writings of conspirators, not being part of the *res gestae*, but mere relations or narratives of some part of the transaction, are treated as hearsay, and are not admissible.

What are "res gestae"? "Res gestae" are all acts and transactions forming part of the matter under investigation. "Res gestae."

In the same manner as collateral testimony can be brought against the prisoner to show intention, so can he bring similar evidence in his defence to *disprove* such intention; *e. g.*, on a charge of murder he may prove acts of kindness and expressions of good will towards the deceased to show that his intention was not likely to be what the charge imputed.

Rule 2.—The burden of proof lies with the party making the assertion; *e. g.*, if the charge be drunkenness, it is for the prosecutor to prove that the prisoner was drunk, not for the prisoner to prove that he was sober. Rule 2.

If the prisoner plead guilty, the prosecutor is relieved of the burden of proof.

During the trial the burden of proof is frequently shifted on to the prisoner by means of what in law are called "presumptions." The following are the principal ones:—

(*a*). *In all cases where an action is unlawful the law will presume criminal intent; e. g.*,— Presumptions.

Ex. 1. A man is killed by the prisoner; if accidentally or in self-defence it is for the prisoner to prove that it was so, because killing a man is an unlawful act, therefore the law will presume criminal intent unless proof be brought to the contrary.

Ex. 2. *Forgery.*—The criminal intent must be proved by the prosecutor, because the act of writing another man's name is not a crime unless it be done with criminal intent.

Ex. 3. *Desertion.*—It is sufficient for the prosecutor to prove absence without leave, for this is an illegal action; the prisoner must prove the intention to return.

(*b*). The possession of stolen goods shortly after the theft throws on the possessor the *onus* of accounting for his possession of them.

(*c*). A letter properly addressed to prisoner and posted. The law will presume that he received it, unless he prove that he did *not.*

(*d*). *The law presumes "omnia rite esse acta"*—*i. e.*, that all necessary things have been done, unless disproved; *e. g.*,—

1. A soldier tried. You need not prove his enlistment.
2. Soldier tried for striking an officer. You need not prove the officer's commission.

(*e*). *The law presumes that every man is innocent until the contrary be proved.* This does not, however, invalidate (*a*), *viz.*, that if you prove the illegal act, the law will presume illegal intention.

(*f*). In civil law, a receipt for subsequent rent is presumptive proof that rent for the same premises for a previous period has been paid; and, similarly, proof of the settlement of a soldier's accounts for a particular month would, in the absence of proof to the contrary, be presumptive proof that he had been settled with for any former month.

(*g*). It is the duty of officers to make themselves acquainted with the orders published in the order book. A court will presume that an order so published was known by such officer, unless he brought proof of his not having been able to see it.

(*h*). When an action is done which is injurious to another man, the law will, *primâ facie*, presume malice.

These are the principal "presumptions." Q. R. Appendix C, 26, 27

On a charge for "having wilfully maimed or injured *with intent* to render unfit for the service." In default of other evidence the intent would be presumed from the illegal act of maiming, &c. [The old rule (*a*)].

Lord Mansfield points this out very clearly. His words are—

"Where an act, in itself indifferent, if done with a particular intent, becomes criminal, *then* the intent must be proved and found; but where the act is itself unlawful, the proof of justification or excuse lies on the defendant, and in failure thereof the law implies a criminal intent." When intent must be proved. When presumed.

Rule 3.—*The substance only of the issue or charge need be proved.* Rule 3.

This is to prevent minor issues—*i. e.*, small things which do not really affect the charge—from interfering with the course of justice.

All offences may be divided into—

1. Specific act.

2. Concomitant circumstances which are merely an aggravation.

If the second part, or aggravating circumstances, be not proved, the prisoner may still be found guilty of the other part.

In cases of slander or disrespectful words, a slight discrepancy will not matter, so long as the material part of the words be proved. This rule is applicable in cases in which the evidence fails to establish the full import of the offence, but nevertheless proves facts which are sufficient to constitute a crime which is included in the

charge; thus, a soldier charged with desertion may be found guilty of absence without leave; or one charged with striking a superior officer in the execution of his office may be found guilty of striking only. It must, however, be borne in mind that, though a man may be found guilty of a minor offence of the same kind, involving a lesser punishment, you can never find him guilty of a greater crime than that charged, which would entail a greater punishment.

Rule 4. *Rule 4.—Hearsay is no evidence.*

Hearsay evidence is evidence of the statements of *third* persons made in the absence of the prisoner.

It applies to written as well as to spoken matter, and includes any verbal or written narrative of facts given second-hand, and the value of which depends, not on the veracity of the witness before the court, but on that of another person *not* present. Such evidence is rejected on the broad principle that every fact must be proved on oath in the presence of the court, and that the witness must be open to cross-examination.

The point at issue may be, not whether a statement was true or not, but whether it was made; *e. g.*, a Fenian informer was allowed to state what passed at Fenian meetings to show that they were treasonable; but if his statement went on to repeat a narrative there told by a third party, it was not allowed to be taken as evidence against the prisoner. A threatening statement is an act, *not* a narrative, and may be deposed to.

What a man has said or written may prove that he had certain knowledge. A statement made by a third person *in the presence of the prisoner* immediately after the commission of the offence

may be received as confirmatory evidence; *e. g.*, a witness deposes "I heard a heavy fall in the barrack-room; I ran in and saw Sergeant Smith on the ground; he was bleeding at the nose; the prisoner, Private Jones, was standing over him. Sergeant Smith said: 'Private Jones has just knocked me down, seize him.' Private Jones then ran out before I could secure him." This evidence would be admissible as confirmatory of any statement subsequently deposed to by Sergeant Smith, *because it was made in the presence of the prisoner*; but had the evidence commenced "as I was entering the barrack-room Private Jones ran out, &c.," this witness could not depose to what the sergeant said, because it was not said in the presence of the prisoner.

Exceptions.

There are certain exceptions to this rule, that "hearsay is no evidence," and that every fact must be proved on oath in the presence of the accused, and the witness must be open to cross-examination.

The most important are—

Dying declaration.

1. The dying declaration of a person who, having received a mortal injury, and fully believing that he is in immediate danger of death, relates the cause of his death, or other material circumstance.

The immediate prospect of death is considered equivalent to an oath in influencing the person to speak the truth.

Such a statement, though *not* made in the presence of the accused, *nor* subject to cross-examination, *is* admissible, but *only* where the death of the person who made the declaration is the subject of the charge, and where the circumstances of the death are the subject of the dying declaration.

Note this.—This evidence *is not* available to prove anything else, such as a forgery or other crime; *e. g.*, a man dying robbed, his dying declaration is *not* admissible to prove the robbery.

Exception 2. 2. The declaration of a person robbed or of a woman ravished, made immediately afterwards, may be received as *confirmatory evidence*, though the particulars of such statements cannot be enquired into.

3. Statements of third persons made in the presence of the prisoner are sometimes received, not so much as evidence of the acts, but of the prisoner's conduct under the circumstances.

The value of any dying declaration may, of course, be called in question; *e. g.*, it may be shown that the deceased, at the time he made his statement, did not believe that he was dying; or that his statement, on oath, would be unworthy of belief.

Hearsay, finally, is admissible, when the words or writings are received in evidence, *not* as proof of the statements therein contained, but as being, in fact, transactions in themselves, concerning which enquiry may be instituted as to whether they have taken place or not.

Rule 5. *Rule 5.—The best evidence must be produced which the nature of the case admits of.*

The meaning of this rule is, that no evidence shall be admitted which leaves grounds for supposing that other and better evidence remains behind in the possession or power of the party. The very production of any secondary evidence tends to raise a presumption of some secret or sinister motive for withholding the better and more satisfactory evidence, and leads to the inference that the best evidence, if produced, would

have led to the detection of some concealed falsehood.

To illustrate the rule. The official record is the best evidence of the proceedings of a court of justice, and a written document is the best proof of its own contents.

Where it can be shown that the best possible evidence cannot possibly be produced, the law will allow the next best, or "secondary" evidence to be taken; *e. g.*, if a document no longer exist, or be in the possession of the prisoner, who refuses to produce it after being called upon to do so, then a copy duly sworn to by the person who made it, or who compared it with the original, or the evidence of the person who wrote the original, or of some one who has seen the document and can swear to its contents, may be taken, but no unauthenticated copies or hearsay as to its contents can be received. **Secondary evidence.**

Now, what is "the best evidence"? **Best evidence.**

1. The best is the evidence of your own senses, but this is not often available.

2. The next best is the oral evidence of persons who can speak *from their own knowledge* from having seen or heard, or taken part in the transaction. **Oral evidence.**

Example—

1. An original letter.

2. Some one who can swear to its contents.

The latter must not be taken unless it can be shown that the former cannot be produced.

3. Evidence at second-hand, called secondary; *e. g.*, a copy of the letter.

More will be said on this under "documentary evidence."

One witness sufficient. Observe that, though the law lays down the *kind* of evidence, it does not define the *amount*. One witness is sufficient, if his evidence be legally good and satisfy the court. The only exceptions are treason and perjury.

Exceptions.

Accomplice. The evidence of an accomplice is legally sufficient, but is generally considered to need corroboration.

Single witness. The credibility of a single witness would be, of course, liable to be impeached, and would be judged from attendant circumstances. It is, therefore, only when, from the privacy of the offence, the possibility of further proof is excluded, that a court would be satisfied with the evidence of a single witness.

The question is, not by how many witnesses a fact may have been deposed to, but whether it has been proved satisfactorily.

A number of witnesses no more prove a fact than a number of arguments prove a conclusion.

The clear, full, impartial evidence of one witness free from all suspicion or bias, is worth more than that of a crowd, all making the same assertions, yet none of them worthy of belief.

The value of oral evidence is, that the witness speaks from his own knowledge, and his trustworthiness is guaranteed in two ways, *viz.*—

(*a*). By his being on oath.

(*b*). By his being open to cross-examination.

This latter, cross-examination, is—

1*st.*—For veracity.

2*nd.*—To test his powers of memory and observation.

CIRCUMSTANTIAL EVIDENCE.

Circumstantial evidence is such as indirectly proves a second fact by directly proving another fact not directly at issue.

The court must judge of the connection which the facts proved have with the points at issue.

Presumptive proof is proof which arises from circumstantial evidence. **Presumptive proof.**

This evidence is not so easy to falsify as direct evidence, and is better tested by cross-examination. Its value depends on the number and strength of the different chains of evidence, all tending to the same point. "Circumstances cannot lie," but the conclusions drawn from them are frequently incorrect.

When all the proofs of a fact are dependent on *one*, the number of proofs neither increase nor diminish the probability of the fact, for the value of the whole is reduced to the value of that on which they depend (just as a rope is no stronger than its weakest part); but where the proofs are distinct, and independent of each other, the probability increases in proportion to the number of proofs, for the falsehood of one does not affect the others.

DOCUMENTARY EVIDENCE.

If any person has in his possession, or under his control, any letters, papers, returns, orders, books, &c., which are considered necessary to the trial, a special clause is inserted in the summons to attend ordering him to bring them with him. This is called a *duces tecum.* A personal or informal request is not sufficient.

The prisoner may thus require the prosecutor to produce documents.

The prisoner cannot be compelled to furnish such evidence against himself, but, if called upon to do so by the prosecutor, through the deputy judge-advocate, or the president, and he refuse to do so, after proof of reasonable notice, secondary evidence of their contents may be received.

The court must decide whether the witness should be compelled to produce the documents or not; and if he refuse to do so, he can, if a civilian, be attached, and if a military witness, be put in arrest, and tried by court martial.

Privileged documents.

Certain documents cannot be demanded; *e. g.*, minutes of evidence before the privy council, and proceedings of a military court of enquiry cannot be called for in civil courts without the permission of the Crown; nor can the minutes of a court of enquiry be called for by courts martial without the consent of the superior military authority by which the court of enquiry was assembled. So also confidential reports or confidential letters can be produced only by permission of superior military authority. Should it be refused, the refusal ought to be properly proved, and should be recorded in the proceedings. Documents may be divided into two classes, *viz.*:—

(*a*). Public.

(*b*). Private.

(*a*). *Public*, are all public records, registers, pay lists, returns, proceedings of courts, records of convictions, and similar documents.

(*b*). *Private*, are all letters, whether official or otherwise, and private accounts, receipts, &c.

Public records.

As a rule, all public records are accepted as evidence of the facts they are required to register, and which are immediately within the knowledge of the registering officer; *e. g.*, a

prison record could not be brought forward to prove a previous conviction, but it could be used to prove the date, because the crime was not within the knowledge of the prison officer.

When the original records cannot be conveniently produced, a certified copy is sufficient, bearing the signature of the officer who keeps the record. **Certified copy.**

The following documents are declared to be admissible as evidence before civil courts or courts martial by the Army Discipline Act, *viz.*:— **Documents admissible.**

1. Certificate from the clerk of any civil court of the conviction and sentence or acquittal by it of any person subject to military law. A. D. A. 157.

Sufficient evidence of such conviction, sentence or acquittal.

2. Descriptive return signed by a justice of the peace. A. D. A. 156 (*i*), and 147 (*b*).

Evidence of the matters therein stated.

3. Attestation paper, or declaration made on re-engagement, or enrolment. A. D. A. 156.

Evidence of the person making it having given the answers therein recorded.

4. Record made in regimental books according to the Queen's Regulation, and signed by commanding officer, or copy of such record certified by the officer having custody of such book. A. D. A. 156 (*h*).

This would embrace—

Record of declaration of illegal absence from board. A. D. A. 70.

Record of soldier's confession of desertion. A. D. A. 71.

Entries of previous convictions.

Entries of former instances of drunkenness.

Evidence of the facts stated by such record.

A.D.A.156 (e). 5. Letter respecting a person having served, or not having served in, or having been discharged from, Her Majesty's forces or ships, if signed by or for a secretary of state, or commissioner of the admiralty, or by commanding officer of the force or ship to which such person appears to or claims to have belonged.

Evidence of facts stated in such letter.

A.D.A.112. 6. Requisition of emergency for transport in the United Kingdom, signed by the proper officer.

Evidence, till the contrary be proved, of its being duly issued and signed.

A. D. A. 177 (3). 7. Certificate from officer appointed to pay a reserve force man that such man has absented himself from the place at which he was ordered to be present for receipt of such pay.

Evidence that such man absented himself from the said place.

Proceedings of courts martial how proved.

A. D. A. 58. The proceedings of general courts martial and district or garrison courts martial are either produced in original, or a copy certified by judge advocate-general or his deputy is produced. Those of regimental courts martial are proved by signature of the commanding officer, or of the adjutant having custody of the original. Of course, such proceedings will only prove that certain evidence was given, or a certain statement was made, and will not prove any allegation by the recorded testimony of witnesses at that trial. Evidence, however, given by a witness at a former trial, may be read over to him in the presence of the new court, and, if acknowledged by him on oath, may be entered on the proceedings.

As before mentioned, when the proceedings of a court martial were lost, the sentence was proved by the evidence of the president, corroborated by a memorandum made by the confirming officer.

Official letters are, in the eye of the law, *private*, and no letter (except the one specially mentioned) can be adduced as proof of the facts it professes to relate; *e. g.*, a copy of a register is proof of a marriage, baptism, or funeral, but a letter from the clergyman stating that he performed such a ceremony is no proof. Such a letter is merely the written statement of a person *not* before the court, *not* on oath, and *not* subject to cross-examination.

A letter is, however, proof of itself of its own existence, and of the fact of its having been written; *e. g.*, an insubordinate letter is proof of insubordination, and a threatening letter is proof of the threat.

Where a letter is admissible as evidence, a copy is not admissible unless it be shown— **Copy when admissible.**

1. That the original is not available.
2. That the copy is a true copy.

A mere authenticating signature is not sufficient to prove the latter.

Where the original is produced, the handwriting must be proved, unless it be admitted by the opposite party. Notice of the letters, &c., they are required to produce, must be given to the opposite party through the deputy judge-advocate.

If the handwriting be admitted, and the original produced, it must be so stated in the proceedings or deposed to in evidence.

Best proof of a document.

The best evidence of the authenticity of a document is that of the writer.

The next best that of persons who saw it written.

The third best, that of persons who, from knowledge of the writer and his handwriting, can depose to it.

Experts in handwriting.

Experts in handwriting are now admissible in civil trials, and, therefore, are so before courts martial; as a rule, their evidence is not considered in itself sufficient, but is corroborative.

Copies must be attested in court by the person who made, or subsequently examined them, comparing them with the original, unless admitted to be true copies, which admission must be recorded in the proceedings. This does not apply to such certified copies as the law declares shall be admissible without further proof.

Although the original must, if possible, be produced before the court, a copy will do to attach to the proceedings.

"*Depositions*" are not admissible before courts martial, but there is nothing to prevent a court being adjourned, and ordered to reassemble in the hospital, or quarters of a sick person who is unable to attend, and his evidence could be there taken. Such adjournment must be regularly recorded, and the re-assembly of the court subsequently, as mentioned in Chapter VI.

The proceedings of a court of enquiry cannot, of course, be brought to prove the facts detailed in the statements recorded by it, but the proceedings may be adduced in evidence for such a purpose as to prove a discrepancy between a statement then made and the evidence given

before the court martial, or where a man be tried for making a wilful false statement before such a court.

Such documentary evidence as may have been duly proved and admitted by the court is read in open court by the deputy judge-advocate.

All documents attached to the proceedings must be identified by the signatures of the president and deputy judge-advocate.

The prisoner is often allowed to put in testimonials and letters relative to character, although such writings are not legal evidence; but the court should not allow any document which is *not legal* evidence to influence their *finding*. **Testimonials, &c.**

CONFESSIONS; ADMISSIONS.

"*Admissions*" are usually confined to minor points; *e. g.*, handwriting or dates; they must be recorded in the proceedings, and exclude the necessity of evidence on the point.

"*Confessions*," *if voluntary*, are admissible under whatever circumstances made; but any inducement of any kind, whether a threat, or a promise of pardon made by any person in authority, would render such confession inadmissible; *e. g.*, the circumstances detailed by a man who had turned Queen's evidence under hope or promise of pardon, are not admissible as evidence against him, inasmuch as they were not voluntary. A confession made by a man when drunk is admissible, but the court would, of course, weigh it accordingly. In the case of a man in jail writing a letter, and attempting to send it, such letter, if intercepted, would be evidence against him. **Prisoner's letter intercepted.**

The law takes no notice of oaths irregularly administered; *e. g.*, if a prisoner put a fellow- **Irregular oaths.**

prisoner on oath not to reveal what he should tell him, and then confess a crime, his fellow-prisoner's evidence *would* be admissible to prove such confession.

Privileged communications.

Statements made by the prisoner to his legal adviser are privileged, but the privilege is that of the client.

Confessions made to a priest are not privileged by English law.

Rules. Procedure 55.

Admissions made before courts of enquiry have been laid down not to be admissible before courts martial.

NOTE 1.—*If any part of a confession be taken, the whole must be taken with equal weight; e.g., if a person say, "I did owe the debt, but I paid it," the confession cannot be taken to prove the debt without also proving that it was paid.*

NOTE 2.—*The confession is evidence only against the confessor, and not against his accomplices.*

A plea of "guilty" is a confession in the fullest degree, but a court martial is ordered to receive and report such evidence as may afford to the authority, which has discretion in carrying into effect the sentence, a full knowledge of the attendant circumstances.

ORAL EVIDENCE.

Competency of Witnesses.

Interested witness.

Formerly all interested witnesses were refused; but, since the passing of Lord Denman's Act in 1843, all witnesses are taken, and it is for the court to judge of the credibility of the witness.

Incompetency.

There are two cases of incompetency to give evidence, *viz.*:—

1. Prisoner and his wife.
2. Want of understanding.

So long as a man is actually on trial, his evidence (or that of his wife) cannot be taken;

otherwise it can, however great his interest. Of course the court must judge of its trustworthiness.

An exception to this is that, if a person be charged with an offence against section 149, Army Discipline Act (buying, selling, &c., a soldier's arms, clothing, equipment, &c.), the accused, or the wife or husband of the accused, may, if he or she think fit, be sworn and examined as an ordinary witness in the case. A. D. A. 149

A man's wife can only give evidence against him where criminal violence from him to her is the charge. **Wife's evidence.**

Persons tried together cannot give evidence for or against one another. If the prisoner wish for the evidence of another prisoner, he can apply to be tried separately.

If, during the trial, the court find no evidence against one of the prisoners, they may acquit him, and then call him as a witness.

A man awaiting trial on the same charge, and called by the prisoner in his defence, would not be cross-examined, so as not to prejudice his own trial, and he need not reply to any question which would criminate himself. **Witness himself awaiting trial.**

A man thus awaiting trial could not be called as a witness for the prosecution; if his trial were over, he could be so called, as anything he said would not injure himself.

Evidence of accomplices, and of principal against accessory (*e. g.*, thief against receiver), is admissible, but must be received with great caution, and is generally considered to need confirmation. **Accomplices.**

A member of the court *may* give evidence, but it would be undesirable to put him on the court, if it were known that he would be a witness. **Member of court.**

Want of understanding.

Case 2.—Want of understanding, such as in children and lunatics.

The court must judge for itself; the incapacity is only co-extensive with the defect. The court may ask a child questions to ascertain the development of its mental faculties, its religious knowledge, and the sense it entertains of the consequences of perjury. In case of insanity, if the court be satisfied that the witness is momentarily sane, they may take his evidence; or if he were a monomaniac, and quite sensible as to the subject on which he is required to testify, he can be examined.

Want of religious belief no longer debars a witness from giving evidence. The law was altered in 1869. Such a witness makes a declaration, and if he depose falsely, he can be prosecuted for perjury.

Questions as to competency should be dealt with before the witness is sworn, but an objection may be raised at any stage. Questions as to credibility cannot be raised till after the witness is examined.

EXAMINATION AND CROSS-EXAMINATION.

The examination of witnesses is to be by question and answer, the only exception being when the prosecutor is himself a witness. The old plan of letting a witness tell his own story, often allowed a witness to state a great deal of hearsay, and, in fact, to give illegal evidence; and though such portions of his evidence might be rejected, still impressions were sometimes thus made upon individual members, which the admissible parts of his evidence were not calculated to convey.

The evidence must be recorded in the first person, and, as nearly as possible, in the witness's own words.

Leading questions are such as suggest the answer required. They are not allowed in the examination-in-chief, except perfectly introductory, or unless the witness be manifestly an unwilling one. **Leading questions when allowed.**

They are, however, allowed in cross-examination.

Questions would be allowed to be put to a child or an unintelligent savage, which would not ordinarily be allowed.

The court must judge of the fairness of the question.

As a rule, a witness can only be examined as to facts within his own knowledge or observation. His opinion or belief is not generally accepted. I do not mean that he must, in every case, have such certainty as to preclude all possibility of doubt; absolute certainty is not necessary, especially in cases of identity or of handwriting. A witness who falsely swears that he thinks or believes, may be convicted of perjury equally with the man who swears positively to that which he knows to be false. A further exception is the case of *experts—i. e.*, scientific or professional men; *e. g.*, a doctor may depose to the best of his judgment as to the cause of a man's death, or as to a man's mental or bodily condition. Experts may depose as to handwriting. A ship-builder was permitted to give his opinion as to the seaworthiness or otherwise of a ship which he had never seen, on the facts stated in evidence by others. **Opinion or belief of witness.** 1 Phillips, 522.

A witness may not read his evidence, but may refresh his memory by referring to notes made **Witness using notes.**

by himself (or by another, and examined by himself), at or about the time of the act.

The opposite party may demand to see these notes, and may cross-examine on them.

A witness may correct or explain anything in his evidence; the court may recall him to ask him if he can explain anything obscure in his evidence; any such correction or explanation is to be separately recorded in the proceedings. No erasure or alteration in previous entries is allowed.

The examination-in-chief must be confined to the points at issue.

Cross-examination.

Cross-examination is usually against accuracy or credibility of witnesses. A witness may be questioned as to facts stated by other witnesses, or as to motives by which he may be actuated. Much greater latitude is allowed than in the examination-in-chief.

RESTRICTIONS UPON CROSS-EXAMINATION.

1. Questions, the answers to which would criminate the witness, *may be put*, but the witness cannot be compelled to answer them.

☞ *This applies also to questions which would criminate the husband or wife of the witness.*

2. Questions, tending to degrade the witness, may be put; and, *if relevant to the point at issue*, must be answered, provided they do not come under "(1)."

3. Questions *not* relevant to the point at issue, and tending to degrade the witness, may be put, but need not be answered. If the witness answer the question, *you must accept that answer whether true or not.* Evidence to prove the falsity of such answer could not be brought forward, because that involves a collateral issue.

There is *one* exception to this, *viz.*—

A witness may be asked whether he has been convicted of felony or misdemeanour, and if he refuse to answer, or deny it, evidence may be brought to prove it.

To explain the relevancy or otherwise of a question tending to degrade the witness,—on a trial for rape, the woman need not answer whether she has or has not had criminal connection with *another* man; and if she deny it, you cannot bring evidence to prove that she has done so; but the prisoner might ask whether *he* had not, with her consent, previously to the alleged rape, had such intercourse, and, if she denied it, might bring evidence of the fact, because this *is* relevant to the point at issue. 1 Phillips, 505.

A witness cannot be compelled to answer on privileged communications; *e. g.*, such as may have passed between a client and his lawyer, husband and wife, or confidential communications between government officers and their subordinates. A person employed by government cannot be compelled to disclose his instructions, nor the names of spies, &c.; nor can a witness for the Crown be made to disclose through what channel information reached government. **Privileged communications.**

A witness may be examined as to what he stated on a former trial or out of court, or as to his own previous history; the court may check any unnecessary latitude. After cross-examination the witness may be re-examined, but not in new matter, only to explain what may have arisen in cross-examination.

If a witness has been sworn, but not examined, the other party may cross-examine him; and a witness who has originally been called by the

prosecutor, and cross-examined by the prisoner, may be called in the defence by the prisoner, and then cross-examined by the prosecutor.

A witness may be recalled by the court at any time and questioned by it, but either party may cross-examine him with regard to this question and answer. If a question be objected to, whether put or not, it is to be entered on the proceedings, and the court would then be cleared to decide whether it should be put or not.

Impeaching credibility.

There are several ways of impeaching the credibility of a witness, *viz.*:—

1. Cross-examining as to credit—*i. e.*, making him contradict himself as to his own evidence.

2. By specific contradiction of his own evidence.

NOTE.—*Any statements made in examination-in-chief may be contradicted by evidence.*

Statements made in cross-examination may be contradicted by evidence if relevant, not if irrelevant.

3. By evidence as to general bad character, such as that he is not to be believed on oath, having been convicted of perjury.

4. By statements made by the witness out of court, provided that—

(*a*). The statements were material to the point at issue before the court.

(*b*). That the witness has been cross-examined on them.

The party whose witnesses are impeached may bring evidence to re-establish their credit, or to attack the credit of the impeaching witnesses.

MILITARY LAW

AS APPLICABLE TO PERSONS SUBJECT TO THE INDIAN ARTICLES OF WAR.

I PROPOSE to take the headings of the subject in the same order as has been followed in the preceding chapters on military law as applicable to persons subject to the Army Discipline Act, only noticing those points in which Indian military law *differs* from what I may call English military law.

Indian military code.

The written part of the code consists of—

1. The Indian Articles of War.
2. The Military Presidency Regulations.

The Indian Articles of War are included in an Act of the local legislature, and thus, in India, with respect to the persons amenable to them, take the place of the Army Discipline Act and Articles of War in the English code; whilst, over all persons in or connected with the Indian forces, the Presidency Regulations take the place of the Queen's Regulations.

Duration of the Indian Articles of War.

The Indian Articles of War, being in fact a portion of an Act of the local legislature, remain in force till repealed.

Persons amenable to I. A. W.

The persons amenable to the Indian Articles of War are, generally, all persons serving in or attached to the Indian army, as well as the native establishment attached to European troops in India. The only persons in the Indian army not so liable are—

1. European commissioned officers.
2. British-born subjects of Her Majesty, or their legitimate christian lineal descendants. I. A. W. page 3.

These two classes are liable to trial only under the Army Discipline Act, and can only be
I.A.W.123. punished under the Indian Articles of War for contempt of court. Americans or christian Europeans *not* British-born, belonging to the Indian army, *are* liable to trial under the Indian Articles of War, but the court must consist of European officers only.

The classes of persons amenable then are—

1. Commissioned officers other than European.
2. Persons in the subordinate medical department.
3. Warrant and non-commissioned officers, and *unattested* hospital attendants.
4. Armed soldiers, including *unattested* recruits.
5. Others enlisted and attested; *e. g.*, *lascars*, *syces*, *mahouts*, *grasscuts*, *&c.*
6. Followers of the army, *public or private.*

Note the unattested persons who are liable, *viz.*—

(*a*). Hospital attendants.

(*b*). Recruits.

(*c*). Followers.

There is *no* "half-pay list," and native officers are not liable to trial by court martial after removal from the service.

Native non-commissioned officers and soldiers are not liable to trial by court martial after leaving the service by discharge, dismissal, or by being pensioned.

The European officer, non-commissioned officer or soldier, is so liable subject only to the limitation of time.

The time of limitation is the same as under the English articles for natives *during service*. Time of limitation. I. A. W. 98.

AUTHORITY UNDER WHICH INDIAN COURTS MARTIAL ARE HELD.

The "Indian Council's Act" authorizes the Indian legislature to frame Articles of War for the native officers, soldiers, &c., in the native Indian forces, and to authorize courts martial for the trial of such persons.

The Indian Articles of War, which were passed by the Indian legislature in 1869, give the power of making orders and issuing warrants for holding courts martial to— I.A.W., Part III., h.

(*a*). The governor-general of India in council.

(*b*). The governors of Madras and Bombay in council.

(*c*). The commander-in-chief of any presidency.

The commander-in-chief of a presidency cannot authorize trials in another presidency, except in the case of native troops belonging to his presidency, and serving in another, having been ordered by the governor-general to continue subject to his orders. I.A.W., Part III., g, i.

The different kinds of courts martial are :— I. A. W. 72.

1. General courts martial.
2. Detachment general courts martial (two kinds).
3. District or garrison courts martial.
4. Regimental courts martial.
5. Regimental detachment courts martial.
6. Detachment courts martial.
7. Summary courts martial (two kinds).

G. C. M. by whom convened.
I. A W. 73.

A general court martial may be appointed by—

(*a*). The commander-in-chief of a presidency.

(*b*). Any officer authorized to do so by a warrant from the commander-in-chief of a presidency.

(*c*). Any officer in actual command of native troops authorized to do so by governor-general in council, or the governor of a presidency in council.

(*d*). Any officer commanding native troops *not attached to the forces of a presidency*, authorized to do so by warrant from the commander-in-chief in India under the authority of the governor-general of India in council.

D. G. C. M. by whom convened.
I. A. W. 77.

A detachment general court martial may be appointed by—

(*a*). The commander-in-chief of a presidency.

(*b*). Any officer holding a warrant from the commander-in-chief of a presidency to convene such courts.

(*c*). *Without warrant*, by officer commanding troops, on complaint made of an offence against the person or property of any resident of the place.

☞ NOTE.—*These courts cannot be held in British India, nor in the dominions of Indian states in alliance with her Majesty, wherein Her Majesty's forces are permanently stationed.*

D. C. M. by whom convened.
I. A. W. 79.

A district or garrison court martial may be appointed by—

(*a*). The commander-in-chief of a presidency.

(*b*). Any officer holding a warrant from him to convene such courts.

(*c*). Any officer in actual command of native troops authorized to do so by order in council of governor-general of India, or of governors of Madras or Bombay.

(*d*). Any officer commanding native troops *not* attached to a presidency, who holds a warrant from the commander-in-chief in India under the authority of the governor-general of India in council.

NOTE.—*A district court martial for trial of a warrant officer, &c., of the Indian army is convened as above; whereas for warrant officers, who are under the Army Discipline Act, it must be convened by the officer commanding the presidency.*

A regimental court martial may be appointed by the officer commanding any regiment or corps. *No warrant.* I. A. W. 83.

A regimental detachment court martial, by the officer commanding a detachment of his own regiment or corps. *No warrant.* I. A. W. 86.

A detachment court martial by— I. A. W. 87.

(*a*). Officer commanding any station, force, or detachment of men of different regiments or corps. *No warrant.*

(*b*). On the line of march, or on board any vessel, for trial of offences not ordinarily triable by regimental court martial, by officer commanding the detachment. *No warrant.*

NOTE.—*Mutiny, desertion, and disgraceful conduct cannot be so tried.*

A summary court martial may be held by— I. A. W. 90.

(*a*). Any European officer in actual command of a regiment or corps.

(*b*). Any European officer in command of a detachment of, or equivalent in strength to, three troops or companies.

(*c*). Any European officer in command of any European corps or detachment to which native details, subject to these articles, are attached.

(*d*). Any European officer in charge of an arsenal, ordnance establishment, or camp equipage depôt.

(*e*). Any European officer in command of a detachment of any strength in detached situations, beyond sea, or out of British India, or on service in the field, or when immediate example is necessary, and a detachment court martial cannot be assembled, nor reference made to superior authority without detriment to the service. *No warrant.*

Observe that, with regard to regimental and detachment courts martial, there is no limitation as to the *rank* of the convening officer; a subaltern can convene if in command.

COMPOSITION, &c.

I. A. W. 74. A general court martial must consist of, as a minimum—

In British India ...	...	9 officers.
Out of British India ...	...	7 do.
I. A. W. 75. If convened under an order in council	...	5 do.

In this last case, it shall, *if so provided in the order*, be composed of either native or European officers.

I. A. W. 96. The governor-general, or the governor of a presidency, may order any court martial to be composed of all European officers, or may authorize any officer so to compose courts.

I. A. W. 103. The president is not specially appointed by warrant or order. The senior officer is the pre-

sident. In case of his death or unavoidable absence, the next senior takes his place without any special appointment, provided that the necessary minimum number remain.

No native officer below the rank of subadar, resaldar, or resaidar can be president of a general court martial. **Court martial warrant.**

There is *no* rule about the length of time an officer must have been in the service to be qualified to sit on a general court martial.

Any person subject to the Indian Articles ordered for trial by court martial can claim to be tried by European officers, except in the case of trials under an order in council (I. A.W. 75), when it may have been ordered that it shall consist of natives. I. A. W. 97.

Every court martial *must* have an interpreter. I. A.W. 102.

Every general court martial *must have* a judge-advocate, "who shall conduct the proceedings," *except* general courts martial under an order in council, which need not have a judge-advocate. Every district or garrison, regimental or detachment, court martial must, if composed of native officers, be attended by a European superintending officer of not less than four years' service. Mutiny cannot be tried by any other than a general court martial. I. A.W. 101.

No court martial other than a general court martial can try a commissioned officer or award a sentence of death, transportation, or imprisonment over one year. I. A.W. 130, d.

A detachment general court martial, however, must be an exception to this, for it is declared to "have the same power as a general court martial." I. A. W. 78.

I.A.W. 171. Civil offences can only be tried by court martial *out of British India.* They can then be tried by a general court martial, which must have a judge-advocate.

I.A.W. 172. No evidence is to be taken of previous convic-
I.A.W. 173. tions, character, &c., in such case. The sentence is to be in accordance with the Indian Penal Code.

Sentence not to be carried out till confirmed by
I.A.W. 174. proper authority. Sentence of death not to be carried out till confirmed by commander-in-chief of the presidency to which the prisoner belongs; or if he belong to no presidency, by commander-in-chief in India; or, *when out of British India,* by the officer commanding the forces with which the offender is serving.

POWERS OF SENTENCE.

I. A. W. 76. A general court martial can sentence to—

Death.

Penal servitude for life, penal servitude not over ten years, and not less than four years.

Transportation for life, or not less than seven years.

Imprisonment, with or without hard labour, and with or without solitary confinement, not exceeding fourteen years.

Dismissal from the service.

Suspension from rank, pay, and allowances for a stated period.

Degradation to an inferior grade.

Loss of standing in list of rank.

Reduction to the ranks.

Corporal punishment not exceeding fifty lashes.

Forfeiture of additional pay, good conduct pay, and claim to pension.

Forfeiture of arrears of pay and allowances.

Stoppages.

Also if any person be sentenced to transportation, or to imprisonment for seven years or more, the court *may* adjudge forfeiture of the rent and profits of his moveable and immoveable estate during such punishment.

In above note as follows:—

Death, sentence of, is only awardable for offences against Articles 7 to 23 inclusive, and there must be a majority of two-thirds to carry it *except in the case of a court held under an order in council, when a majority is sufficient.* I. A.W. 119.

Penal servitude or transportation, only for offences against the same articles.

Penal servitude is to be given to Americans, or Christian Europeans not of British birth, or their Christian legitimate lineal descendants. I. A.W. 144.

Transportation to other persons subject to the Indian Articles of War.

Transportation, or imprisonment *with hard labour* exceeding three months, involves, necessarily, dismissal. I. A.W. 155.

(*a*). From date of confirmation in the case of a sentence of a court martial.

(*b*). From date of the sentence in the case of a criminal court.

Any person below the rank of warrant officer, sentenced for *disgraceful conduct* to— I. A.W. 157.

Dismissal,

Imprisonment with hard labour,

Corporal punishment,

shall, *on confirmation* of such sentence, be dismissed with ignominy.

Penal servitude limited as follows:—

For life, for offences against Articles 7 to 23, and for abetting offences under Articles 7, 8, 10, 13, 14, 18, 19,

Not exceeding ten and not less than four years, for abetment of offences under Articles 9, 11, 12, 15, 16, 17, 20 to 23.

Imprisonment is limited as follows:—

Not exceeding fourteen years, for offences against Articles 7 to 23, or abetting offences against Articles 7, 8, 10, 13, 14, 18, 19.

I. A. W. 71. *Not exceeding ten years*, for abetting any other offence liable to death or transportation for life.

I. A. W. 54–56. *Not exceeding three years*, for offences against Articles 54, 55, 56, *viz.*, embezzlement, wilful destruction of government property, and giving wilful false evidence.

For abetting other offences than those above mentioned, imprisonment is limited to *half* what could be given for the crime abetted.

I.A.W. 133. *Not exceeding two years*, for any other offences against the Articles.

I. A. W. 57. *Dismissal.* Observe that this is imperative for embezzlement, wilful destruction of government property, and giving wilful false evidence; as also is forfeiture of arrears of pay and allowances. Dismissal forfeits all claim to pension.

Suspension from rank, pay, and allowances. Observe that this is only awardable to persons of or above the rank of warrant officer, and cannot be awarded for abetment, or for offences for which dismissal is imperative.

This last remark applies also to—

Degradation to lower grade, awardable to sub-assistant surgeons, hospital assistants, native doctors, and warrant officers.

Loss of standing in list of rank, awardable to any offender of or above the rank of non-commissioned officer. I.A.W. 130. 132.

Reduction, to non-commissioned officers *only*, and not for abetment or for offences involving compulsory dismissal. I.A.W. 132.

Corporal punishment can be given under the Indian Articles at any time and place, but only to reduced non-commissioned officers and others below that rank.

Forfeiture of good conduct pay *necessarily* follows conviction by any court martial, and may be awarded by order of the comanding officer. I.A.W. 165.

On conviction of disgraceful conduct a general district or garrison court martial *may* award forfeiture of additional pay, good conduct pay, and claim to pension on discharge, which might have accrued from former service, or to forfeit such advantage absolutely, whether from former or future service. I.A.W. 136.

Claim to pension is forfeited by dismissal. I.A.W. 3, 4.

Forfeiture of arrears of pay and allowances is imperative, on conviction of disgraceful conduct, if the offender be sentenced to dismissal, or to a punishment which involves dismissal, to the extent necessary to make good any proved loss or damage arising from disgraceful conduct. I.A.W. 137.

Any court *may*, in addition to dismissal or to a sentence involving dismissal, sentence any person to such forfeiture to the extent necessary to make good any proved loss or damage arising from misconduct. *Stoppages* are awardable when dismissal is not given, and when any loss or damage is charged and proved as arising from misconduct. The amount of loss or damage I.A.W. 137.

must *always* be proved. Stoppages are not to extend beyond one year, and are limited to—

Officers, two thirds of pay and allowances.

Other persons, one-half of pay and allowances.

NOTE.—*Under Indian Articles of War there is no such punishment as forfeiture of medals, decorations, annuities, and gratuities.*

DETACHMENT GENERAL COURTS MARTIAL.

These may be said to be of two kinds, *viz.*—

1. Those convened by the commander-in-chief of a presidency or by officer holding warrant from him to convene them.

2. Those convened *without warrant* by the officer in actual command of the troops.

The former can try any offences; the latter are limited similarly to English field general courts martial—*i. e.*, they can only try offences against the person or property of inhabitants of the country.

These courts can only be held *beyond the limits of British India &c.*

I. A.W. 142. If the sentence does not exceed that awardable by a district court martial, it can be confirmed by the officer who appointed the court. If it exceed such sentence it must be confirmed by the officer commanding the forces with which the offender is serving. They are composed as similar English courts.

DISTRICT OR GARRISON COURTS MARTIAL.

I. A. W. 80. A district court martial must consist of seven officers, unless that number cannot be *conveniently* assembled, when it may consist of five.

If held under an order in council, it may consist of three, who may, if so ordered, be all European officers or all natives.

"When necessary" it may be composed of officers all of the regiment to which the prisoner belongs. I. A. W. 81.

The only difference in the court for trial of a sub-assistant surgeon, hospital assistant, native doctor, or warrant officer, is that not more than two officers of the regiment, corps, &c., to which he belongs are to sit on the court.

A district court martial can try any person subject to the articles except commissioned officers, and can try any offence except mutiny. I. A. W. 82.

If the court be composed of native officers, it must be attended by a European superintending officer of not less than four years' service, who shall conduct the proceedings. I. A. W. 101.

If a court martial be composed of all European in place of native officers, it should be stated in the heading of the proceedings, or else a certificate should be attached, showing that either the prisoner had demanded to be so tried, or that it was so constituted by order. I. A. W. 96, 97.

Though a district court martial can legally try anything except mutiny, yet capital offences should not, ordinarily, be so tried except with special sanction.

POWERS OF SENTENCE.

Imprisonment with or without hard labour and solitary confinement for a period not exceeding one year. This cannot be given *in addition* to corporal punishment.

Dismissal.

Suspension from rank, pay, and allowances.

Degradation.

Loss of standing.

Reduction to the ranks.

Corporal punishment not exceeding fifty lashes.

Forfeiture of additional pay, good conduct pay, and claim to pension.

Forfeiture of arrears of pay and allowances.

Stoppages.

Imprisonment can only be given to persons below the rank of warrant officer.

For the other punishments, see remarks under general courts martial.

I. A. W. 131. *Punishments awardable to sub-assistant surgeon, hospital assistant, native doctor, or warrant officer, by sentence of a district court martial.*

Dismissal.

Suspension from rank, pay, and allowances for a stated period.

Reduction to a lower grade or class.

Being placed one or more steps lower in the list of his rank.

Forfeitures.

Stoppages.

REGIMENTAL COURTS MARTIAL.

I. A. W. 84. These must consist of five officers, unless that number cannot *conveniently* be assembled, when three are sufficient.

They can try any person below the rank of warrant officer.

There is no limitation as to rank of the president or of the convening officer.

I. A. W. 85. A regimental court can *never* try mutiny, or desertion, or disgraceful conduct.

On boardship or on the line of march they can try any thing except these.

Grave offences, such as are not ordinarily tried by regimental courts martial, can be tried by it when the officer commanding the division or district so directs.

POWERS OF SENTENCE.

Dismissal.
Loss of standing. } To non-commission-
Reduction to the ranks. } ed officers.
Imprisonment with or without hard labour or solitary confinement, for a period not exceeding six months.
Corporal punishment not exceeding fifty lashes.
Forfeiture of arrears of pay and allowances.
Stoppages.

REGIMENTAL DETACHMENT COURTS MARTIAL; DETACHMENT COURTS MARTIAL.

Are the same in every respect as regimental courts martial, except that the first is composed of officers of a detachment of one regiment, and the latter of officers of a detachment of men of different regiments, but with regard to confirmation these two detachment courts are limited as follows:—

If the detachment consist of three troops or companies, or the equivalent of this number, the commanding officer can confirm. I. A.W. 142, g, h.

If of less than this number, the sentence shall be submitted for confirmation to the officer commanding the prisoner's regiment, or to the nearest superior officer holding a command of not less than a regiment.

In the following situations, however, the officer commanding a small detachment *can* dispose of and carry out the sentence, *viz.*:— Exceptional case.

(*a*). In detached situations beyond the sea.
(*b*). Out of British India.
(*c*). On service in the field.

(*d*). If an immediate example be necessary and reference as above cannot be made without detriment to the service.

I.A.W. 129. When a regimental or detachment court martial tries an offence, not within its ordinary jurisdiction, on the line of march, or on board-ship, the proceedings must be sent for the information of the commander-in-chief of the presidency to which the regiment or detachment belongs, and of the commander-in-chief of the presidency in which they may be, or to which they are proceeding.

SUMMARY COURTS MARTIAL.

I.A.W. 91. I.A.W. 127. The European commanding officer holding it alone constitutes the court. *He is sworn.*

I. A.W. 125. I. A.W. 127. The court has to be attended by two other commissioned officers, European or native, *who are not sworn.*

There must be an interpreter, *who is sworn* as such, and he may be one of the three officers above mentioned.

I.A.W. 92. These courts can try any person amenable to the Indian Articles *below* the rank of warrant officer, *who is liable to trial by courts composed of native commissioned officers,* provided that he be under the command of the officer holding the court.

I. A.W. 93. They *can* try any offence *except mutiny.* But, unless there be an emergent reason, and reference cannot be made to superior authority, they must not try—

Capital offences, I. A. W. 7 to 23 inclusive.
Disgraceful offence (except those under I. A. W. 58, 59, 62, 63).
Offences against the commanding officer himself.

POWERS OF SENTENCE.

(*a*). If held by an officer commanding a regiment or corps— I. A.W.94.

The same as a district court martial.

(*b*). If held by any other commanding officer—

The same as a regimental court martial.

Summary Courts in Mountain Batteries. If held in Punjab Mountain Batteries they have powers of a district court martial; if held by officer commanding Royal Mountain Batteries, when senior officer of artillery present, they have only powers of a regimental court martial.

A summary court martial needs no confirmation, but the sentence can be inflicted at once, provided that the officer holding it has five years' standing. If he have not this service it must be approved by the nearest superior military officer holding a command of not less than a regiment. I. A.W.90.

Evidence is taken in these courts on oath, but previous convictions and character are recorded by the commanding officer holding the court, as of his own knowledge. I. A.W.128.

The proceedings are to be signed by the commanding officer and the officers attending the trial, and are to be forwarded at once to the officer commanding the division or district (*i. e.*, usually to the divisional deputy judge-advocate). I. A.W.129.

The trial may be set aside or annulled by—

(*a*). The commander-in-chief in India or of the presidency.

(*b*). The officer commanding the division or district.

(*c*). If held in a force attached to a presidency, by the officer commanding such force; but only on the merits of the case, not on any technical ground.

GENERAL REMARKS.

I. A.W.103. *President.* The senior officer sits as president without any special appointment. In case of his death, or unavoidable absence, the next senior presides without any special appointment.

I. A.W.102. If there be no other qualified person available he acts as interpreter.

I. A.W.118. In matters *other than finding or sentence* he has a casting vote.

I. A.W.104. In case of a general court martial appointed under an order in council, or of any other court martial composed of European officers under Article 96 or 97, he conducts the proceedings.

I. A.W.102. *Interpreter* is appointed for every court martial, but has no vote; he is sworn, according to
I. A.W.108. the oath or affirmation laid down in the Articles, by the officer conducting the proceedings; he, or the officer conducting the proceedings, administers
I. A.W.109. ters the oath to the president and members of
I. A.W.110. the court; and he, or any other European officer of the court, administers the oath to the judge-advocate or superintending officer.

I. A.W.102. When the court is composed of native officers, he forms part of such court.

I. A.W.106. There is no restriction as to the hours during which courts may be held.

I. A. W., Part III. a. No person acquitted or convicted of any offence by either a court martial or a court of criminal justice is liable to be again tried or punished for the same offence by any court whatsoever.

Such person may, however, be dismissed the service.

It is, however, laid down that if at any trial for desertion, absence without leave, &c., the court do not pursue the course directed by Article 115, the convening officer may annul the proceedings, and order a fresh trial by the same or any other court martial. I should doubt if this would be considered legal, had such original court either convicted or acquitted the prisoner. I. A.W. 115.

The term "year" means calendar year.

"*Month*" means calendar month.

Solitary confinement is limited to fourteen days at a time, with intervals between the periods of solitary confinement at least equal to such periods. I. A.W. 134.

It cannot exceed eighty-four days *in one calendar year.*

POWERS OF A COMMANDING OFFICER.

Native commissioned officers get different rates of extra or good conduct pay; they can be dis-rated or placed on a lower scale of pay by order of the commanding officer, a full report being made to head-quarters. Bengal Regulations, vi. 6.

A commanding officer can dismiss any attested person of or below the rank of non-commissioned officer who, after being dismissed or discharged, re-enters the service without stating the fact of his previous dismissal or discharge. I. A. W. 5.

A commanding officer can remand regimental staff non-commissioned officers to ordinary regimental position; *e. g.*, kote duffadars of troops, and colour havildars of companies, to duffadar and havildar.

I. A. W. 164. A non-commissioned officer may be reduced by order of the commander-in-chief of a presidency, or of the officer commanding any force not attached to a presidency.

I. A. W. 165. The commander-in-chief in India is authorized, under the authority of the governor-general in council, to prescribe minor punishments, and to specify by whom they may be awarded. Courts martial are forbidden to award these punishments.

I. A. W. 165. *Unless specially ordered by the commander-in-chief*, no one above the rank of non-commissioned officer is liable to such minor punishments. They are not awarded, however, to non-commissioned officers except as mentioned above.

G. G. O., Bengal, 839, 5th August, 1876. The commander-in-chief *has* "specially ordered" that native medical subordinates may be fined by the commanding officer of the regiment, detachment, or depôt, on the medical officer's request. Such fine not to exceed five days' pay.

These punishments have been ordered to be as follows:—

1. Imprisonment for seven days.

Bengal Regulations, vi. 10. *To be reserved, as far as possible, for riot, disobedience, violence or insolence to superiors, and should precede any further punishment.*

2. Confinement to lines not over thirty days.

This includes any period of imprisonment, and carries with it punishment drill for whole period, if it be for fifteen days or under, but not more than fifteen days altogether.

Punishment drill is limited to one hour at a time, and to two hours a day.

3. Extra guards or picquets, for irregularities on those duties.

4. Forfeiture of good conduct pay, either as a substantive punishment, or in addition to other minor punishment. I. A. W. 165.

Such pay is not necessarily forfeited by a minor punishment.

These punishments can be given on detachment by any commissioned officer, European or native, *if permitted by the commanding officer; and if he authorize it*, wing and squadron commanders and adjutants may award ten days' confinement to lines with drill; and quartermasters, wing and squadron officers, and doing duty officers, may award the same for seven days; whilst native officers can give three days only.

PUNISHMENTS TO NATIVE FOLLOWERS.

The commanding officer of any regiment, corps or detachment, European or native, when in camp, or at any frontier post to which this Article (166) may be specially extended, may sentence native followers— I. A. W. 166.

(*a*). If above the degree of a menial servant—
To imprisonment for thirty days or less, or
Fine, fifty rupees or less.

(*b*). If a menial servant—

Imprisonment not exceeding seven days, or
Corporal punishment not exceeding twelve strokes of a rattan.

Where there is no cantonment magistrate, the officer commanding the cantonment may, for breach of cantonment rules, award any person *not subject to the Indian Articles, nor a European British subject, or an officer or soldier*— I. A. W. Part III., O.

Fine, not exceeding fifty rupees, or
Imprisonment, thirty days.

The latter, either in a military guard or a jail.

POWER OF APPEAL.

I. A.W. 167. Any person subject to the Articles thinking himself wronged may appeal to his commanding officer; if he belong to a troop or company, to the officer commanding the same. If the person complained against be such officer, then the complaint is to be made to the next senior.

The officer complained to must examine into the matter, and, if necessary, refer it to proper authority.

If the complaint be frivolous, the person preferring it may be tried by any court martial competent to try him, and may be punished according to the powers of such court; but cannot be given dismissal, corporal punishment, or imprisonment with hard labour.

There is no right given of appealing to a court martial against the award of a commanding officer.

PROVOSTS MARSHAL.

I. A.W. 168. Provosts marshal may be appointed by the commander-in-chief of a presidency or the officer commanding the forces in the field, for the prompt repression of irregularities in the field or on the line of march.

I. A.W. 169. The duties of a provost marshal are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, and to prevent breaches of the same by persons belonging to or attached to the army.

He may give corporal punishment to any such persons below the rank of warrant officer who commits a breach of good order and military discipline *in his view, or in that of one of his assistants.* Such corporal punishment must not ex-

ceed what a court martial can give, and is to be limited acccording to orders from the officer commanding the troops.

If the offence was *not* committed in his view, or in that of his subordinates, he must report the matter, not punish it himself.

NON-MILITARY OFFENCES.

As before mentioned, these cannot be tried by court martial *in British India*, but the offender must be handed over to the nearest magistrate. I.A.W. 170.

If applied to, all persons in or attached to the army must assist the officers of justice to apprehend and secure such person.

Penalty for not so assisting the civil power is "any punishmant other than death or transportation, awardable under the articles." *It is not stated how or by whom such punishment is to be awarded, but it may be presumed that it means by sentence of a court martial.*

Out of British India, offences against the Indian Penal Code which are not included in the Indian Articles, can be tried by a general court martial convened by any officer who can convene a general court martial. I.A.W. 171.

No evidence of previous convictions, &c., is to be taken by such court. A.D.A. 172.

There must *always* be a judge-advocate to such a court.

Sentence is to be awarded according to the Indian Penal Code. A.D.A. 173.

The sentence must be confirmed by the officer commanding Her Majesty's forces with which the offender is serving. A.D.A. 174

DEBTS, &c.

I. A. W. Part III. b. No attested person is liable to arrest for debt; nor can his arms, horse, clothes, equipment, &c., be seized; nor can his pay and allowances be attached.

There is nothing in the Indian Articles of War about courts of request; they are held under a separate Act of the legislature. They can only be held—

1. Where there is no small cause court.
2. In any camp or detachment in the field.
3. Out of British territory.

They are convened monthly by the officer commanding the station or force; composed of either three European officers or three native officers and one European superintending officer of not under five years' standing.

All natives who are subject to the Indian Articles of War are liable to these courts. They can decide matters up to two hundred rupees in India; out of India, unlimited. If held out of India, they must be composed of European officers.

These courts must not meddle with caste suits, real property, or contract debts over twenty rupees, unless the latter be written in the vernacular and signed by the defendant, or for him by some one *not* the plaintiff.

The plaintiff cannot obtain a judgment for more than two hundred rupees, whether there be only one or several claims; and the court having given judgment, no further claim can be preferred on the same ground to any other court.

The plaintiff and defendant can both be examined.

The court can direct either general or special execution, and the commanding officer can order either to be carried out, no matter which the court directed.

General Execution.—On written order from the commanding officer *private* property may be seized and sold.

If debtor be not attested he may be arrested and imprisoned (in any neighbouring civil jail or within military limits) for two months unless debt be paid sooner.

Special Execution.—When this is ordered, the debt is to be satisfied out of the debtor's pay and allowances, but not otherwise.

Not more than half a commissioned officer's pay and allowances can be thus stopped monthly, and in case of a soldier or non-commissioned officer, not more than one quarter of his monthly pay and allowances.

DISMISSAL.

A commissioned officer may be dismissed the service by— I. A. W. 3.

(*a*). Sentence of a general court martial,

(*b*). Governor-general of India in council,

(*c*). Governor of presidency in council,

(*d*). Commander-in-chief of presidency,

and, if so dismissed, he forfeits all claim to pension.

Any person other than a commissioned officer can be dismissed by the above-mentioned persons and by sentence of any court martial which can try him, and if he belong to a force not attached to a presidency, by the officer commanding such force. I. A. W. 4.

I. A. W. 5. A commanding officer can dismiss any man who, after dismissal or discharge, re-enters the service without stating the fact.

I. A. W. 155. Any sentence by a court, civil or military, of transportation or of imprisonment with hard labour exceeding three months, involves dismissal.

I. A. W. 156. No person who has undergone such sentence is to be re-admitted to the service, or to be entitled to any pension.

I. A. W. 157. On a sentence of dismissal, imprisonment with hard labour or corporal punishment, for disgraceful conduct, on any person below the rank
I. A. W. 158. of warrant officer, being confirmed, the offender is to be dismissed with ignominy, and a copy of the sentence is to be sent by the adjutant-general of the army to the chief civil officer of the district.

I. A. W. 6. Every attested person dismissed or discharged must be given, by his commanding officer, a certificate showing by what authority, and for what cause, he is dismissed or discharged, and the full period of his army service.

PROCEEDINGS BEFORE TRIAL.

I. A. W. 10. Indian Articles direct arrest or confinement of an offender before trial, and direct that he shall not "be detained in arrest or confinement longer than is necessary for the purposes of justice."

A native non-commissioned officer or soldier forfeits pay and allowances for the period of previous confinement on a charge of which he may be subsequently convicted, and gets subsistence allowance only.

COURTS OF ENQUIRY.

The court of enquiry on illegal absence on any person subject to the articles absent for two months takes evidence on oath; they make a declaration, which is recorded by the commanding officer in the regimental books; and if the absentee do not surrender or be apprehended, this record has the legal effect of a conviction for desertion. If he surrender, or be apprehended, this record, or a properly certified copy, is presumptive evidence of the facts therein stated. I.A.W. 162.

There is no number of officers laid down to compose the court, but it may be composed of either European or native officers, *or of both in conjunction.*

For ordinary courts, *vide* Bengal Regulations, VIII., 6 to 33.

A court is held, when required, for reporting on claims to the native "order of merit." **Order of merit.** Bengal Regulations, XXI. 52–59.

MILITARY COURTS OF INQUEST.

These are not mentioned by the Articles of War, but are held under the Presidency Regulations. They are convened by officers commanding divisions, districts, brigades, or station. They consist of three officers, of whom one should be a medical officer. **Courts of inquest.** Bengal Regulations, VIII., 1–5.

APPLICATION FOR TRIAL.

Although applications for trial are *addressed* to the staff officer of the general officer—*i. e.*, assistant adjutant-general, brigade major, or station staff officer, yet it has been ordered that *in India*, to save time, they are to be sent direct to the divisional or district deputy judge-advocate.

This applies to all applications for trial by court martial in India, whether under the Army Discipline Act or the Indian Articles of War.

SUMMONING WITNESSES.

I.A.W.122. For a general court martial, witnesses are summoned by the judge-advocate. For a minor court martial, by the officer ordering the trial.

For a military witness the summons is sent to his commanding officer.

For civil witness, it is sent to the magistrate within whose jurisdiction he resides, and he is bound to give it effect.

If the witness be required to produce documents, they must be accurately described.

I.A.W.124. A witness going to, or returning from, a court martial under summons is privileged from arrest in any civil court or proceeding; and if so arrested, the court martial may discharge him from such arrest.

CONTEMPT OF COURT.

I.A.W.123. If contempt of court be committed by a person subject to the articles in the presence of the

I. A. W. 68, 69. court, it is to be punished under the articles—*i. e.*, the offender may, on conviction by the same or any other court martial, be sentenced to any punishment which such court can award.

I.A.W.123. If committed by a person *not* subject to the articles, the offender shall be delivered to a magistrate, who shall proceed against him as if it had been committed against a court of criminal justice.

JUDGE-ADVOCATE.

The judge-advocate should not be the interpreter; though there is no law against it, still it is not the custom of war in like cases.

The judge-advocate may be relieved at any time by any officer *duly appointed* by the officer who has a warrant enabling him to appoint judges-advocate. It must not be forgotten, however, that *the new judge-advocate must be at once sworn.*

It is not an uncommon thing to have to appoint an officer to act as judge-advocate on such occasions as, say, the re-assembling of a general court martial for revision, when the regular deputy judge-advocate, who may have come a long way to attend the court, may have had to go back, and it would be inconvenient to recall him.

PRISONER'S "FRIEND" OR COUNSEL.

Such person may not examine or cross-examine witnesses, or address the court, but may only aid the prisoner with suggestions, &c. Bengal Regulations, VI., 89.

WITNESSES.

A witness is examined on oath or affirmation in such form as is most binding on his conscience. If the same witness appear to give evidence at more than one trial by the same court martial, he must be sworn afresh for each trial. I. A. W. 111–113.

When a witness uses any uncommon or peculiar word or idiom, it should be recorded in the Roman character, and the interpreter's translation of it. *This applies also to courts held under the Mutiny Act.* Bengal Regulations, VI., 88.

PRISONER.

If the prisoner persist in outrageous conduct, he may be handcuffed, or gagged, after due caution, but only when really necessary.

PROCEEDINGS ON TRIAL.

The books which ought to be laid on the table for reference at court martial are—

Indian Articles of War.
Presidency Regulations.
Indian Evidence Act.
Bible, to swear Europeans.
General Orders, &c., regarding native trials.

Challenge.
I.A.W. 107. The judge-advocate and the superintending officer can *not* be challenged.

At trials under an order in council, or at summary trials, there is *no right of challenge*. There is no distinction as to president or member in challenging; the officer objected to withdraws, and a majority of the remainder decides the point.

Court sworn.
I.A.W. 108. The officer conducting the proceedings first swears the interpreter.

I.A.W. 109. Then the interpreter, or the officer conducting the proceedings, swears the president and members.

Then the interpreter, or other European officer of the court, swears the judge-advocate or superintending officer.

PREVIOUS CONVICTIONS—CHARACTER.

I.A.W. 117. After conviction and before sentence, evidence of previous convictions, civil or military, is taken in the case of any person subject to the Articles of War. Evidence of character is taken for any one below the rank of a warrant officer holding an honorary commission. These are proved either orally, or by production of the court martial books, or certified extracts. On summary courts, the commanding officer records them as of his own knowledge.

Bengal Regulations, VI., 94–98.

I.A.W. 128.

SENTENCE.

In a sentence of death, court must state whether the offender is to be shot or hanged. All the members sign the proceedings, and the judge-advocate, or superintending officer, as well as the interpreter; and on summary courts, the attending officers. I. A. W. 141.

When the prisoner is convicted of disgraceful conduct and sentenced to dismissal, imprisonment with hard labour, or corporal punishment, a descriptive roll must be attached showing offender's place of residence. An entry should be made of the time at which the court finally closed. See I. A. W. 158.

CONFIRMATION.

General or district courts martial must be confirmed by either— I. A. W. 142.

(*a*). The commander-in-chief of a presidency.

(*b*). An officer holding warrant from him to confirm such courts.

(*c*). Officer in actual command of troops authorized to do so by governor-general or governor of presidency in council.

(*d*). Officer commanding native troops not attached to a presidency, who holds a warrant giving him this power from the commander-in-chief in India.

Detachment general courts martial may be confirmed by the officer holding the court, provided that the sentence do not exceed that awardable by a district court martial.

If it exceed such sentence, it must be confirmed by the commander of the forces with which the offender is serving. *Vide ante.*

No sentence of death is to be carried into effect till confirmed by commander-in-chief of presi- I. A. W. 174.

dency; or out of British India, by officer commanding the forces; or when the offender does not belong to any presidency, by the commander-in-chief in India.

I.A.W.142. The officer appointing a regimental court martial may confirm it.

With regard to detachment and summary courts martial, *vide ante*, remarks under those headings.

I.A.W.146. Sentences on warrant officers, and on persons superior to them in rank, are not to be carried into effect till confirmed by the commander-in-chief of the presidency to which the offender belongs; or when he belongs to a force not attached to a presidency, by the officer commanding such force, *except on foreign service, or when reference cannot be made to superior authority without detriment to discipline.*

COMMUTATION, &c.

I.A.W.142 (1). The officer who can confirm a sentence can commute it as follows:—

I.A.W.143. *Death* may be commuted to transportation for life, or not less than seven years; or to imprisonment with or without hard labour, and with or without solitary confinement, not exceeding fourteen years.

I.A.W.144. *Transportation* may be commuted to imprisonment with or without hard labour, and with or without solitary confinement, for any period not exceeding fourteen years, and not exceeding the term of transportation awarded by the court.

I.A.W.145. *Dismissal* on a warrant officer or his superior may be commuted to suspension from rank, pay, and allowances for a stated period.

I.A.W.147. *Corporal punishment* may be commuted to dismissal from the service; or to imprisonment *without hard labour*, but with or without solitary

confinement, for any period not exceeding one year which the court martial which tried the offender might have awarded.

Imprisonment with hard labour may be commuted to dismissal from the service; or to imprisonment without hard labour, and with or without solitary confinement, for the period mentioned in the sentence, or for any shorter term. I.A.W.148.

Dismissal on a non-commissioned officer may be commuted to reduction to the ranks. I.A.W.149.

A sentence on a non-commissioned officer of reduction *and* corporal punishment or imprisonment may be *mitigated* to reduction only.

A confirming officer can, of course, refuse to confirm the sentence, which would then become inoperative.

The governor-general in council in all cases, and the governors of presidencies in council, or the commanders-in-chief of presidencies, with regard to persons in their territories or under their command, can pardon any person convicted by court martial of a military offence, or remit the punishment awarded, wholly or in part. I.A.W.160.

The confirming officer is given, under the Indian Articles, power to "annul" any sentence to which his confirmation is necessary. I.A.W.142.

Summary courts martial may be "set aside," but not on technical grounds. *Vide ante* "summary courts martial."

NOTE.—*There is no authority given in the articles for a sentence of death being commuted to penal servitude in the case of Europeans, &c., who are not liable to transportation; nor is there any provision for commuting a sentence of penal servitude to imprisonment for such persons.*

EXECUTION OF SENTENCE.

Transportation. Offender to be delivered to the officer in charge of the nearest jail with a proper warrant. I.A.W.150.

I.A.W.151. *Imprisonment with hard labour.* Offender to be delivered with warrant to nearest jail. If imprisonment be without hard labour, the man is *not* to be sent to jail; and if the imprisonment be for less than three months, and the man to be kept in the army, hard labour should not be awarded. But the commander-in-chief of a presidency, or of a force not attached to a presidency, may direct imprisonment (whether with or without hard labour) to be carried out in any jail, and can order a prisoner's removal from any jail *under military control* to any other place of confinement within the limits of his command.

Bengal Regulations, VI., 350.

I.A.W.152.

I.A.W.153. If, however, the prisoner be in any jail *not subject to military control*, it is the civil authority only—*i. e.*, the government of India, or that of the presidency, which can order his transfer to military custody, or to another place of confinement.

All district courts martial are sent to the deputy judge-advocate, who looks them over and lays them before the confirming officer. All regimental, detachment, and summary courts, under the Indian Articles of War, are sent to him to be looked over. See Bengal Army Regulations, paragraphs 1457 to 1459.

CRIMES AND PUNISHMENT.

I.A.W.8. *Violence to superior officer.* The Indian Articles make no distinction between the case of the officer being in the execution of his office or not. The words are "whether on or off duty, under any circumstances in which the superior officer is distinguishable as such." Also, under the Indian Penal Code, an assault may be committed by making any gesture or preparation with the knowledge that it will cause any person to apprehend criminal force.

Indian Penal Code 351.

Punishments. Death, transportation not under seven years' imprisonment, with or without hard labour, and solitary confinement, not exceeding *fourteen years*, or such other punishment as a general court martial may award.

Under the Indian Articles enlisting in one corps without being discharged first from another is not classed as desertion, but is a separate crime liable to the same punishment. I. A. W. 11.

Observe that a sentry for sleeping on, or quitting his post without leave, is only liable to death in time of war or alarm, or in time of peace when sentry over a state prisoner, magazine, dockyard, or treasure. Otherwise he is only punishable under Indian Article of War 50, under which *any* court martial can give such punishment other than death or transportation as it has power to award. I. A. W. 12.

When sentry, or on guard, plundering or wilfully destroying property under his or the guard's charge— I. A. W. 13.

Punishable with death, transportation, &c.

Quitting guard, &c., *in time of war* without leave is a capital crime. I. A. W. 21.

Scandalous conduct, &c., on the part of a native officer or warrant officer is charged as "behaving in a manner unbecoming his position and character." I. A. W. 25.

Knowingly enlisting a deserter is a separate crime under Indian Articles. I. A. W. 29.

Gross insubordination to superior officer in the execution of his office. I. A. W. 37.

Extortion. I. A. W. 41.

Being in command, and neglecting to compensate a person injured by a subordinate. I. A. W. 43.

I. A. W. 44. Intentionally insulting any person's religion.

I. A. W. 45. Taking bribes.

I. A. W. 49. Appearing armed in camp when off duty.

I. A. W. 56. Note that the false evidence given must be "before a court martial or other *military* court competent to administer an oath."

I. A. W. 57. For this offence, and embezzlement, or wilful destruction of government property entrusted to him for the public service, there are special penalties, *viz.*—

By General Court Martial.

Compulsory. Dismissal, and forfeiture of arrears of pay and allowances.

Not Compulsory. Imprisonment, with or without hard labour, and solitary confinement, not exceeding three years.

or—By District Court Martial.

Any or all of the penalties which such court may inflict for disgraceful conduct.

I. A. W. 61. Embezzling government property not entrusted on the public account is triable under Article 61 as disgraceful conduct, and is punishable by a general or district court martial.

I. A. W. 70. *Unspecified Offences.* This article corresponds to the English A. M. D. 40, but note that, in the Indian Article, "neglecting to obey garrison or other orders" is included under this head; whereas, under the English Act, it has a section to itself, *viz.*, section 11.

It will be observed that in the above I have only called attention to points peculiar to the Indian Articles.

PRISONERS OF WAR.

No person is entitled to pay and allowances, or to reckon service, whilst a prisoner of war. On rejoining, enquiry is to be made by a court martial, which may recommend his being allowed to reckon his service and to receive the whole or any portion of the arrears due to him. If this be confirmed by the commander-in-chief of a presidency, or officer commanding a force not attached to a presidency, he receives the arrears, and reckons such service. I. A. W. 163.

DESERTION.

Absence without leave over two months is presumptive evidence of desertion. I. A. W. 114.

For court of enquiry on illegal absence after two months, see before under "courts of enquiry."

At trials for desertion and absence without leave, should the accused state that any officer in the civil or military service of government can explain his absence, the court is to write to such officer and adjourn till this reply be received. His reply is declared to be receivable as evidence. I. A. W. 115.

If the court is dissolved before the reply comes, or if the court do not act as directed, "the convening officer may annul the proceedings and order a fresh trial by the same or another court martial."

A deserter's effects are to be publicly sold, and the proceeds, after paying regimental and other claims, are to be remitted by the commanding officer to the controller-general of accounts at Calcutta, or the accountant-general of Fort St. George or Bombay. I. A. W. 179.

I. A. W., Part III. d. Written information of a man's desertion is to be given to the civil authorities, and they are to give all assistance for his capture, and to prevent persons subject to the articles from travelling without passes.

The police may arrest any suspected deserter without warrant, and take him before a magistrate; or if there be no magistrate readily accessible, then before the nearest military commanding officer.

I. A.W.154. Any person, subject to the articles, imprisoned forfeits all pay and allowances whilst in prison, and also for period of previous confinement, if convicted.

I. A.W.117. No evidence of general character is given at trial of a warrant officer or person of higher rank.

I. A.W.120. Should any member of the court be unavoidably absent at revision, the cause must be certified to in the proceedings.

PERSON SUBJECT TO THE ARTICLES DYING.

I. A.W.176. If no representative of such person be on the spot, the commanding officer shall secure his effects, cause an inventory to be made, and keep a duplicate, and sell the effects publicly; and, after paying debts and funeral expenses, pay the surplus to the person's legal representative. If the surplus be unclaimed for twelve months, it is to be remitted to the controller-general of accounts, Calcutta, or to the accountant-general of Fort St. George or Bombay. If the man belonged to no presidency, then to the Calcutta official.

I. A. W., Part III. e. Civil officers are to aid in apprehending any person subject to the articles accused of a

military offence, on receiving a written application.

Signatures to applications, certificates, &c., by civil or military officers, are presumed to be genuine, unless the contrary be proved. I.A.W. Part III. f.

EVIDENCE.

Courts held under the Indian Articles of War are guided by the Indian Evidence Act. All persons can give evidence as witnesses unless the court considers that they cannot understand or rationally answer the questions put to them from tender years, extreme old age, disease of body or mind, or some similar cause. Indian Evidence Act, s. 118.

Husbands and wives can give evidence for or against one another, but cannot be compelled to disclose communications made to one another during marriage. Do., s. 120. Do., s. 221.

There is no rule laid down as to more than one witness being required in perjury or other charge. Do., s. 134.

Evidence of previous convictions may be "oral, or in the shape of entries in, or certified extracts from, the court martial books, and it shall not be necessary to prove the signature to such certified extracts." For summary courts martial, *vide ante* under that head. I. A.W. 117.

Admissions are not, under Indian law, conclusive proof of the matter admitted. Indian Evidence Act, s. 31.

Confessions to a police officer are not admissible against the accused, nor are confessions when in police custody, unless made before a magistrate. Do., s. 25.

A confession made by one of several persons who are being jointly tried *may*, by Indian law, be used against the others. Do., s. 30.

A confession to a magistrate is *not* invalidated by Indian law, by the fact that the accused was not warned that what he said would be brought in evidence against him.

Indian Evidence Act, s. 32. Statements made by a person since dead, with reference to the circumstances of the transaction which resulted in his death, *are* receivable, in cases in which the cause of his death comes into question, *whether the person who made them was, at the time, in expectation of death or not.*

Do., s. 167. The improper admission or rejection of evidence is not ground of itself for the reversal of the decision, if it appears that, independently of the evidence improperly received, there was sufficient evidence to justify the decision; or that, if improperly rejected evidence had been received, it ought not to have varied the decision.

Those points only have been noticed which are likely to come before courts martial, and in which the Indian law differs from the English practice.

SIGNING PROCEEDINGS.

I.A.W. 129. On all courts under the Indian Articles of War, the proceedings *must* be signed by all the members and by the interpreter. This applies equally to courts composed of European or native officers.

Courts martial held under the Indian Articles are not required in duplicate.

Bengal Regulations, 1462. The proceedings of native regimental and summary courts martial are to be numbered regimentally, from the commencement of each year.

Do., 1437. At the trial of a medical subordinate, application should be made to the judge-advocate-general at army head-quarters for a copy of the record of his previous convictions.

Should a medical subordinate, at his trial, produce testimonials, copies are to be attached to the proceedings, and the originals returned to him.

Immediate report must be made by the station authorities to the adjutant-general of the date of publication of the sentence of dismissal of a warrant officer or native medical subordinate.

If a native soldier be convicted of disgraceful conduct and sentenced to be dismissed the service, or to such punishment as involves dismissal under Articles 155 or 157, a descriptive roll, both in Persian character and in English, is to be appended to the proceedings. Bengal Regulations, 1461.

The proceedings of any summary or other minor court by which a prisoner may be so sentenced is to be forwarded by the deputy judge-advocate to the judge advocate-general, head-quarters.

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